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Public Contracts and Property Management

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CHAPTER 7
Revised as of July 1, 1982

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code of federal regulations

Public Contracts and Property Management

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CHAPTER 7

Revised as of July 1, 1982

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AS OF JULY 1, 1982

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Cite this Code **C F R**

thus: **41 CFR 7-1.101**

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

ISSUE DATES

Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....as of January 1
Title 17 through Title 27.....as of April 1
Title 28 through Title 41.....as of July 1
Title 42 through Title 50.....as of October 1

The appropriate revision date is printed on the cover of each volume.

LEGAL STATUS

The contents of the Federal Register are required to be judicially noticed (44 U.S.C. 1507). The Code of Federal Regulations is prima facie evidence of the text of the original documents (44 U.S.C. 1510).

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The Code of Federal Regulations is kept up to date by the individual issues of the Federal Register. These two publications must be used together to determine the latest version of any given rule.

To determine whether a Code volume has been amended since its revision date (in this case, July 1, 1982), consult the "List of CFR Sections Affected (LSA)," which is issued monthly, and the "Cumulative List of Parts Affected," which appears in the Reader Aids section of the daily Federal Register. These two lists will identify the Federal Register page number of the latest amendment of any given rule.

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Each volume of the Code contains amendments published in the Federal Register since the last revision of that volume of the Code. Source citations for the regulations are referred to by volume number and page number of the Federal Register and date of publication. Publication dates and effective dates are usually not the same and care must be exercised by the user in determining the actual effective date. In instances where the effective date is beyond the cut-off date for the Code a note has been inserted to reflect the future effective date. In those instances where a regulation published in the Federal Register states a

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The Paperwork Reduction Act of 1980 (Pub. L. 96-511) requires Federal agencies to take steps to reduce the Federal paperwork burden for individuals, small businesses and State and local governments, as well as to maximize the usefulness of information collection. One specific requirement of the Act is for Federal agencies to display an OMB control number with the information collection request.

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A subject index to the Code of Federal Regulations is contained in a separate volume, revised annually as of January 1, entitled CFR INDEX AND FINDING AIDS. This volume contains the Parallel Table of Statutory Authorities and Agency Rules (Table I), and Acts Requiring Publication in the Federal Register (Table III). A list of CFR Titles, Chapters, and Parts and an alphabetical list of agencies publishing in the CFR are also included in this volume.

An index to the text of Presidential documents appears at the end of each compilation of Title 3, The President.

The Federal Register Index is issued monthly in cumulative form. This index is based on a consolidation of the "Contents" entries in the daily Federal Register.

A List of CFR Sections Affected (LSA) is published monthly, keyed to the revision dates of the 50 CFR titles.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

JOHN E. BYRNE,
Director,
Office of the Federal Register.

July 1, 1982.

THIS TITLE

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Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT consists of Subtitle A—Federal Procurement Regulations System, Subtitle B—Other Provisions Relating to Public Contracts and Subtitle C—Federal Property Management Regulations System. Subtitle D is reserved for other provisions relating to property management.

The Federal procurement regulations in Chapter 1 of Subtitle A are those government-wide procurement regulations issued by the General Services Administration. In Chapters 2 through 49 of Subtitle A are procurement regulations issued by individual government agencies. The first 49 parts in each of Chapters 2 through 49 are reserved for agency regulations *implementing* the Federal procurement regulations in Chapter 1 and are numerically keyed to them. The remaining parts in Chapters 2 through 49 contain agency regulations *supplementing* the Federal procurement regulations.

Other government-wide procurement regulations relating to public contracts appear in Chapters 50 through 100, Subtitle B.

The Federal property management regulations in Chapter 101 of Subtitle C are government-wide property management regulations issued by the General Services Administration. In the remaining chapters of Subtitle C are the *implementing* and *supplementing* property management regulations issued by individual Government agencies. Those regulations which implement Chapter 101 are numerically keyed to it.

NUMBERING

The numbering system of Title 41 differs from that used for other titles of the *Code of Federal Regulations.* The numbering system is especially designed to permit the keying of agency regulations to government-wide regulations in Subtitles A and C which are issued by the General Services Administration. Chapters are designated by Arabic numerals. Each section number is a combination showing to the left of the decimal point the chapter and part numbers, separated by a dash. To the right of the decimal point the subpart, section, and subsection numbers are indicated in that order. Thus, an agency assigned to Chapter 2, and wishing to implement the cost-plus-a-fixed-fee contract provisions contained in Chapter 1, Part 1-3, Subpart 1-3.4, section 05, subsection 5 of the Federal Procurement Regulations (§ 1-3.405-5), would assign the section number "§ 2-3.405-5" to the implementing provisions.

Where material in the Federal Procurement Regulations (FPR) requires no implemention or deviation, there is no corresponding number in the agency regulations. Thus, there may be gaps in the sequence of numbers where the FPR, as written, are applicable to agency procurement.

Title 41 is composed of thirteen volumes. The chapters in these volumes are arranged as follows: Chapter 1 (1-1 to 1-10), Chapter 1 (1-11 to App.) and Chapter 2, Chapters 3-6, Chapter 7, Chapter 8, Chapter 9, Chapters 10-17, Chapter 18 (Volumes I, II, and III), Chapters 19-100, Chapter 101, and Chapter 102 to end.

For this volume Mildred L. Isler was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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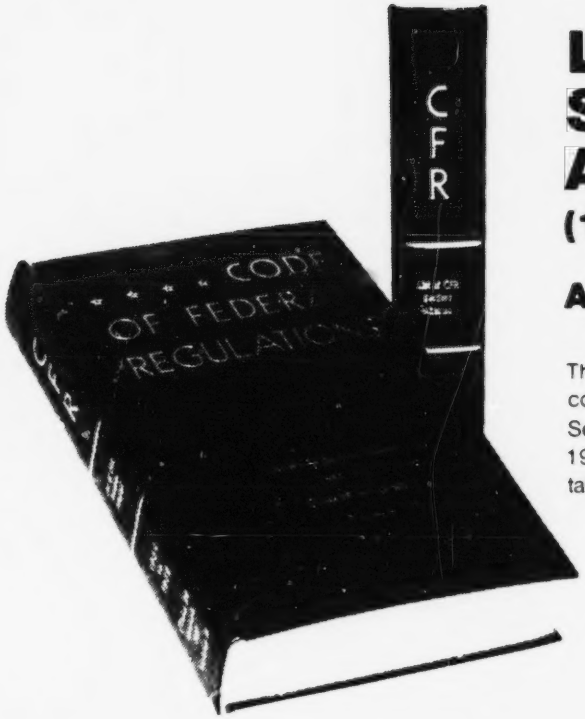

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Title 41—Public Contracts and Property Management

(This book contains Chapter 7)

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Part

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7–1.1001 General policy.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; (22 U.S.C. 2381) E.O. 10973, Nov. 3, 1961, 26 FR 10469; 3 CFR 1959–63 Comp.

SOURCE: 30 FR 12968, Oct. 12, 1965, unless otherwise noted.

Subpart 7-1.1—Introduction

§ 7-1.101 Purpose.

The Agency for International Development Procurement Regulations (AIDPR) supplement the Federal Procurement Regulations (FPR) and implement the procurement related aspects of the Foreign Assistance Act, Executive Order 11223, and established AID policies on procurement as set forth in Supplement B to AID Handbook 1. The AIDPR provides for the codification and publication of procedures for the procurement of services and personal property by AID.

[42 FR 27601, May 31, 1977]

§ 7-1.102 Authority.

AIDPR is prepared by the Assistant Administrator for Program and Management Services by direction of the Administrator of AID pursuant to the Foreign Assistance Act of 1961, complies with the Federal Procurement Regulations System, and implements and supplements the Federal Procurement Regulations (FPR). See FPR 1-1.0.

[30 FR 12968, Oct. 12, 1965, as amended at 38 FR 28665, Oct. 16, 1973]

§ 7-1.103 Applicability.

(a) Unless a deviation is specifically authorized in accord with AIDPR 7-1.107, or unless otherwise provided, FPR and AIDPR apply to all procurements (regardless of currency of payment) of personal property and nonpersonal services to which AID is a direct party. This regulation does not apply to procurements by other parties, such as borrowers and grantees, which are financed under programs administered in whole or part by AID, nor to contracts entered into jointly by AID and the borrower or grantee to make a procurement from a third source for an overseas program or activity.

(b) At Missions where joint administrative services are arranged, procuring offices may apply the Department of State Procurement Regulations (DOSPR)/FPR for all administrative and technical support procurement except in defined areas. The defined areas and administrative guidelines for procurement will be furnished to the overseas Missions by the Office of Management Operations. Administrative and local support services include the procurement accountability, maintenance and disposal of all office and residential equipment and furnishings, vehicles and expendable supplies purchased with administrative and/or technical support funds, either dollars or local currency.

[30 FR 12968, Oct. 12, 1965, as amended at 35 FR 7964, May 23, 1970; 38 FR 28665, Oct. 16, 1973]

§ 7-1.104 Issuance.

§ 7-1.104-1 Relation to Federal Procurement Regulations Systems.

(a) The Federal Procurement Regulations System brings together, in Title 41 of the Code of Federal Regulations, the procurement regulations that apply to all civilian agencies of the Government. FPR is Chapter 1 of Title 41 AIDPR is Chapter 7.

(b) FPR will be divided into 49 parts, and Parts 1 through 49 of AIDPR will expand upon or modify the policies and procedures included in FPR. Material issued in the first 49 parts of AIDPR will be numerically keyed to the corresponding sections of FPR. Parts 50 through 99 of AIDPR will be used for procurement policies and procedures for which FPR has or is not expected to have a counterpart. See FPR 1-1.0.

§ 7-1.104-2 [Reserved]

§ 7-1.104-3 Public.

Those parts of AIDPR which contain basic and significant policies and procedures considered to be of interest to the general public will be published in the daily issues of the FEDERAL REGISTER and, in cumulated form, in the Code of Federal Regulations. Copies of AIDPR in FEDERAL REGISTER and Code of Federal Regulations form may be purchased from the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

§ 7-1.104-4 AIDPR notices.

AIDPR notices will be used to promulgate changes to the AIDPR. Such

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notices will be prepared by the Assistant Administrator for Program and Management Services.

[41 FR 21639, May 27, 1976]

§ 7-1.104-5 Responsibility.

Responsibility for the development and maintenance of AIDPR is assigned to the Assistant Administrator for Program and Management Services, and under him, to the Director, Office of Contract Management, or such other office as the Assistant Administrator may designate. Amendments and revisions will be prepared in coordination with the General Counsel, and such other offices as may be appropriate.

[38 FR 28665, Oct. 16, 1973]

§ 7-1.105 Arrangement.

§ 7-1.105-1 Citation.

Any section of the AIDPR may be identified by "AIDPR" followed by the section number. Since the AIDPR is published in the FEDERAL REGISTER, any section may be incorporated into contracts by reference, using the citation "41 CFR" followed by the section number, as "41 CFR 7-1.105-1."

[38 FR 28665, Oct. 16, 1973]

§ 7-1.105-5 Appendices.

Procurement policies and instructions which are essentially informational or procedural may be issued as Appendices to the AIDPR. Appendices are filed behind the main text of the AIDPR in a section entitled "Appendices." The Appendices section contains a table of contents and individual Appendices. The Appendices are identified by letter and subject title (e.g., Appendix A, [title]).

[46 FR 31566, June 16, 1981]

§ 7-1.106 Implementation within AID procuring activities.

The heads of the various AID procuring activities may issue operating instructions and procedures consistent with FPR, AIDPR, and other Agency regulations, policies, and procedures for application within their organizations. One copy of each such issuance shall be forwarded to the Director, Office of Contract Management. Insofar as possible, such material will be numerically keyed to the AIDPR.

[30 FR 12968, Oct. 12, 1965, as amended at 38 FR 28665, Oct. 16, 1973]

§ 7-1.107 Deviations from Federal Procurement Regulations (FPR) and Agency for International Development Procurement Regulations (AIDPR).

[32 FR 14844, Oct. 26, 1967]

§ 7-1.107-1 Description.

The provisions of FPR 1-1.009-1 defining deviations from FPR shall also apply to the AIDPR. The following actions shall also constitute a deviation from FPR or AIDPR:

(a) When a contract clause is set forth in FPR or AIDPR verbatim, use of a collateral provision which modifies either the clause or its prescribed application.

(b) When a contract clause is set forth in FPR or AIDPR but not for use verbatim, use of a contract clause covering the same subject matter which is inconsistent with the intent, principle, and substance of the FPR or AIDPR clause or related coverage of the subject matter.

(c) Omission of any mandatory contract clause.

[32 FR 14844, Oct. 26, 1967]

§ 7-1.107-2 Policy.

It is the policy of AID that deviation from the mandatory requirements of FPR and AIDPR shall be kept at a minimum and be granted only if it is essential to effect necessary procurement and when special and exceptional circumstances make such deviation clearly in the best interests of the Government.

[32 FR 14844, Oct. 26, 1967]

§ 7-1.107-3 Procedure.

(a) Deviation from FPR or AIDPR affecting one contract or transaction.

(1) Deviations which affect only one contract or procurement will be made only after prior approval by the head of the procuring activity. Deviation requests containing the information listed in paragraph (c) of this section shall be submitted sufficiently in ad-

vance of the effective date of such deviation to allow adequate time for consideration and evaluation by the head of the procuring activity.

(2) Requests for such deviations may be initiated by the responsible AID Contracting Officer who shall obtain clearance and approvals as may be required by the head of the procuring activity. Prior to submission of the deviation request to the head of the procuring activity for approval, the Contracting Officer shall obtain written comments from the Office of Contract Management, Support Division. The Support Division shall normally be allowed at least ten working days prior to the submission of the deviation request to the head of the procuring activity to review the request and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the Support Division for a shorter review period. In addition to a copy of the deviation request, the Support Division shall be furnished any background or historical data which will contribute to a more complete understanding of the deviation. The comments of the Support Division shall be made a part of the deviation request file which is forwarded to the head of the procuring activity.

(3) Coordination with the Office of General Counsel, as appropriate, should also be effected prior to approval of a deviation by the head of the procuring activity.

(b) Class deviations from the FPR or AIDPR: Class deviations are those which affect more than one contract or contractor.

(1) Class deviations from the AIDPR will be processed in the same manner as prescribed in paragraph (a) of this section.

(2) Class deviations from the FPR shall be considered jointly by AID and GSA (FPR 1-1.009-2) unless, in the judgment of the head of the procuring activity, after due consideration of the objective of uniformity, circumstances preclude such joint effort. The head of the procuring activity shall certify on the face of the deviation the reason for not obtaining GSA coordination. In such cases, the Office of Contract Management, Support Division, shall be responsible for notifying GSA of the class deviation.

(3) Class deviations from the FPR shall be processed as follows:

(i) The request shall be processed in the same manner as paragraph (a) of this section, except that the Office of Contract Management, Support Division shall be allowed at least fifteen working days prior to the submission of the deviation request to the head of the procuring activity to effect the necessary coordination with GSA and to submit comments. If the exigency of the situation requires more immediate action, the requesting office may arrange with the Support Division for a shorter review and coordination period. The comments of GSA and the Support Division shall be made a part of the deviation request file which is forwarded to the head of the procuring activity.

(ii) The request shall be processed in the same manner as paragraph (a) of this section if the request is not being jointly considered by AID and GSA.

(4) Deviations involving basic agreements or other master type contracts are considered to involve more than one contract.

(5) Unless the approval is sooner rescinded, class deviations shall expire 2 years from the date of approval provided that deviation authority shall continue to apply to contracts or task orders which are active at the time the class deviation expires. Authority to continue the use of such deviation beyond 2 years may be requested in accordance with the procedures prescribed in paragraph (a) of this section.

(6) Expiration dates shall be shown on all class deviations.

(c) Requests for deviations shall contain a complete description of the deviation, the effective date of the deviation, the circumstances in which the deviation will be used, a specific reference to the regulation being deviated from, an indication as to whether any identical or similar deviations have been approved in the past, a complete justification of the deviation including any added or decreased cost to the Government, the name of the contractor, and the contract or task order number.

(d) Register of deviations: Separate registers shall be maintained by the procuring activities of the deviations granted from FPR and AIDPR. Each deviation shall be recorded in its appropriate register and shall be assigned a control number as follows: The symbol of the procuring activity, the abbreviation "DEV", the fiscal year, the serial number (issued in consecutive order during each fiscal year) assigned to the particular deviation and the suffix "c" if it is a class deviation, e.g. CM-DEV-73-1, CM-DEV-73-2c. The control number shall be embodied in the document authorizing the deviation and shall be cited in all references to the deviation.

(e) Central record of deviations: Copies of approved deviations shall be furnished promptly to the Office of Contract Management, Support Division, who shall be responsible for maintaining a central record of all deviations that are granted.

(f) Semiannual report of class deviations:

(1) AID Contracting Officers shall submit a semiannual report to the Office of Contract Management, Support Division of all contract actions effected under class deviations to FPR and AIDPR which have been approved pursuant to paragraph (b) of this section.

(2) The report shall contain the applicable deviation control number, the contractor's name, contract number and task order number (if appropriate).

(3) The report shall cover the 6-month periods ending June 30 and December 31, respectively, and shall be submitted within 20 working days after the end of the reporting period.

[32 FR 14844, Oct. 26, 1967, as amended at 38 FR 28665, Oct. 16, 1973; 47 FR 25964, June 16, 1982]

Subpart 7-1.2—Definition of Terms

§ 7-1.202 Executive agency.

"Executive agency" includes the Agency for International Development (AID) and its predecessor agencies, including the International Cooperation Administration.

§ 7-1.204 Head of the agency.

"Head of the agency" means, for AID, the Administrator, the Deputy Administrator and the Assistant Administrator for Program and Management Services.

[38 FR 28666, Oct. 16, 1973]

§ 7-1.205 Procuring activities.

The procuring activities within AID are: (a) The AID/Washington procuring activities, which are the Office of Contract Management, and the Office of Management Operations; and (b) the overseas field activities (including missions) which have been delegated procurement authority.

[39 FR 21127, June 19, 1974]

§ 7-1.206 Head of the procuring activity.

The heads of the procuring activities within AID are: (a) The Assistant Administrator for Program and Management Services, (b) the Director, Office of Contract Management, and (c) the Mission Directors or other officers in charge of overseas field activities who have been delegated procurement authority.

[38 FR 28666, Oct. 16, 1973]

§ 7-1.251 AID.

"AID" means the Agency for International Development and its predecessor agencies, including the International Cooperation Administration (ICA).

§ 7-1.252 Administrator.

"Administrator" means the Administrator or Deputy Administrator of the Agency for International Development.

§§ 7-1.253—7-1.254 [Reserved]

§ 7-1.255 Cooperating country.

"Cooperating country" means a foreign country in which there is a program or activity administered by AID.

§ 7-1.256 Foreign Assistance Act.

"Foreign Assistance Act" means the Foreign Assistance Act of 1961, as amended (22 U.S.C., Chapter 32).

§ 7-1.257 Government, Federal, State, local and political subdivisions.

As used in FPR and AIDPR, these terms do not refer to foreign entities except as otherwise stated.

§ 7-1.258 Mission.

"Mission" means the AID mission or the principal AID office or representative (including an embassy designated to so act) in a foreign country in which there is a program or activity administered by AID.

§ 7-1.259 Overseas.

"Overseas" means outside the United States, its possessions, and Puerto Rico.

§ 7-1.260 Third country national (TCN).

Third country national (TCN) means an individual who is neither a cooperating country national nor a U.S. national, but is a citizen of a Free World Country (i.e., Geographic Code 935).

[46 FR 51916, Oct. 23, 1981]

§ 7-1.261 Cooperating country national (CCN).

Cooperating country national (CCN) means an individual who is a cooperating country citizen or a non-cooperating country citizen lawfully admitted for permanent residence in the cooperating country.

[46 FR 51916, Oct. 23, 1981]

§ 7-1.262 U.S. National (USN).

U.S. national (USN) means an individual who is a U.S. citizen or a non-U.S. citizen lawfully admitted for permanent residence in the United States.

[46 FR 51916, Oct. 23, 1981]

Subpart 7-1.3—General Policies

§ 7-1.313 Record of contract actions.

(a) In order that the official contract file may contain a full history of each procurement to support actions taken by various personnel in the procurement cycle, provide information for reviews conducted by AID or others, supply data for use in preparing replies to Congressional inquiries, and furnish essential facts in the event of litigation, each such file shall contain the following data, as applicable:

(1) A copy of the Project Implementation Order (PIO) or other action authority document that conveys authority to procure services or personal property against AID financing;

(2) On negotiated procurements, identification of the circumstance permitting negotiation (AIDPR 7-3.200-50) (FPR 1-3.2);

(3) A list of the sources solicited or justification for limiting sources (AIDPR 7-3.101-50) and a list of any firms or persons whose requests for copies of the solicitation were denied, together with the reasons for denial;

(4) A copy of the formal solicitation of proposal, the Invitation for Bid (IFB), or a record of informal solicitation of proposals;

(5) A copy of the synopsis message sent to the Commerce Business Daily for publicizing contracting or subcontracting possibilities (FPR 1-1.1003-7) or reasons for not synopsizing (FPR 1-1.1003-2);

(6) A copy of each signed bid or proposal received (the successful bid or proposal will be retained in the official contract file; unsuccessful bids or proposals must be retained in the official file for 6 months following execution of the contract);

(7) The Bidder's Statement of Contingent Fee (FPR 1-1.505);

(8) All price and cost data submitted or used, including Certificates of Current Cost or Pricing Data (FPR 1-3.807-4) and Cost Accounting Standards Disclosure Statement (FPR 1-3.1203);

(9) The contracting officer's determination of the contractor's responsibility (FPR 1-1.1204);

(10) A full record of negotiations (memorandum of negotiation) including, but not limited to:

(i) Participants,

(ii) Dates and places of meetings,

(iii) Selection of the successful contractor, including reasons for selection,

(iv) Agreements on Government-furnished materials, equipment, or facilities,

(v) Technical or financial recommendations,

(vi) Terms, conditions and type of contract agreed to,

(vii) Agreements on subcontracting,

(viii) Justification for fixed fee or profit, and

(ix) Justification for final cost or price;

(11) Required Determinations and Findings (FPR 1-3.302);

(12) A record of the pre-award onsite-evaluation surveys conducted (FPR 1-1.1205-4);

(13) A copy of any deviations approved pursuant to AIDPR 7-1.107 or 7-1.305-3;

(14) Any required approvals and clearances (such as General Counsel, Security, Project Office, Mission, Office of Small and Disadvantaged Business Utilization, Office of Data Management, Communications Review Board);

(15) A copy of the contract or award;

(16) A copy of the synopsis message sent to the Commerce Business Daily publicizing contract awards (FPR 1-1.1004-1);

(17) Any exceptions or exemptions to the Buy American Act, Foreign Assistance Act, or AID's Nationality policy (FPR 1-6 and AIDPR 7-6);

(18) Copies of all amendments and task orders with supporting documents;

(19) Copy of contractor's established policies and practices covering compensation, leave, work week, promotions, etc.;

(20) Evidence of contractor's compliance with equal opportunity provisions (AIDPR 7-12.805-4);

(21) Copies of advance payment data (FPR 1-30.4);

(22) Copies of the Federal Reserve Letter of Credit (FRLC) data (AIDPR 7-30.45);

(23) Copy of contracting officer's decisions under the Disputes clause (AID PR 7-1.318);

(24) Termination data (FPR 1-8) (AIDPR 7-8);

(25) All other pertinent correspondence, documents and reports;

(26) Financial release upon completion of the contract (standard payment clause, AIDPR 7-7, 7-16.851).

[40 FR 16205, Apr. 10, 1975, as amended at 45 FR 44275, July 1, 1980]

§ 7-1.318-1 Contracting Officer's decision under a disputes clause.

Before a decision is issued, the disputes clause in the contract must be examined, and the decision must be issued by the official designated in the clause, or his legal successor. Decisions shall be issued only after legal review. The text in FPR 1-1.318-1 may be modified as appropriate with the title "Administrator" inserted, unless the right of appeal is to an officer other than the Administrator. The AID contract appeal procedure is set forth in AIDPR 7-60.

[42 FR 4841, Jan. 26, 1977]

§ 7-1.327 Protection of the privacy of individuals.

The Privacy Act of 1974 is implemented in § 1-1.327 of the FPR, which summarizes statutory and regulatory requirements, and specifies procedures, notification requirements, and a contract clause.

[45 FR 44275, July 1, 1980]

Subpart 7-1.4—Procurement Responsibility and Authority

§ 7-1.400 Scope of subpart.

This subpart describes the procurement responsibilities and authorities in AID.

§ 7-1.405 Ratification of unauthorized contract awards.

The Director, Office of Contract Management (M/SER/CM) is the official within AID who may ratify unauthorized contract awards in accordance with FPR 1-1.405.

[47 FR 25964, June 16, 1982]

§ 7-1.451 Procuring activities.

§ 7-1.451-1 General.

Except as otherwise prescribed, the head of each procuring activity (as defined in AIDPR 7-1.206) is responsible for the procurement of supplies and services under or assigned to the procurement cognizance of his activity. The heads of AID/Washington pro-

curing activities are vested with broad authority to carry out the programs and activities for which they are responsible. This authority includes procurement and the establishment of procurement policies, procedures, and standards appropriate for their programs and activities, subject to Government-wide and AID requirements and restrictions. See AIDPR 7-1.106.

§ 7-1.451-2 Designation of Contracting Officers.

(a) The head of each procuring activity is authorized, except as limited in delegations of authority, regulations, or otherwise, to designate Contracting Officers. Copies of delegations and designations, and terminations thereof, will be furnished to the Director, Office of Contract Management who will keep a current record of all officers and individuals authorized to act as AID Contracting Officers.

(b) A Contracting Officer represents the U.S. Government through the exercise of his/her delegated authority to negotiate, sign, and administer contracts on behalf of the U.S. Government. The Contracting Officer's duties are sensitive, specialized, and responsible. In order to insure proper accountability, and to preclude possible security, conflict of interest, or jurisdiction problems, it is AID policy that AID Contracting Officers must be U.S. citizen employees of the U.S. Government.

[30 FR 12968, Oct. 12, 1965, as amended at 38 FR 28666, Oct. 16, 1973; 46 FR 31887, June 18, 1981]

§ 7-1.451-3 AID/Washington procuring activities.

The procuring activities located in Washington are the Office of Contract Management, Office of Management Operations, and Office of International Training. Subject to delegations of authority, the procuring activities are responsible for procurement related to programs and activities for their areas. The Office of Management Operations, which reports to the Assistant Administrator for Program and Management Services, is responsible for administrative and program support procurements. The Offices of International Training have limited authority for the procurement of training for participants. The Office of Contract Management, which also reports to the Assistant Administrator for Program and Management Services, is responsible for procurements which do not fall within the responsibility of other procuring activities or which are otherwise assigned to it. Delegations of authority to AID/Washington procuring activities are published in the FEDERAL REGISTER, and in AID Handbook 5, Delegations of Authority.

[38 FR 28666, Oct. 16, 1973, as amended at 45 FR 44275, July 1, 1980]

§ 7-1.451-4 Overseas field procuring activities.

Mission Directors (as defined in AIDPR 7-1.258) and specified subordinate individuals may be redelegated procurement authority by the Assistant Administrator for Program and Management Services or his designee based on the recommendation, and with the concurrence, of the regional bureau involved. Mission Directors request a redelegation of authority through the appropriate regional bureau, AID/W. The request should contain the amount desired and justification for this amount. The individual, if other than the Mission Director, who will actually exercise this authority must be named, along with his qualifications (See FPR 1-1.404-1). When such designated individual leaves the post, the designation of a replacement as a Contracting Officer will require concurrence by AID/Washington in accordance with the delegation to the Mission.

[38 FR 28666, Oct. 16, 1973]

§ 7-1.452 Contracting Officers.

§ 7-1.452-1 Authority.

Within the limits of delegations and designations, Contracting Officers are authorized to negotiate, execute, amend, terminate, and take other actions with respect to contracts.

§ 7-1.452-2 Responsibilities.

Contracting Officers will personally sign all contractual documents for which they are responsible. They are responsible for their acts as Contract-

ing Officers and must assure themselves that actions proposed to be taken by them are authorized by law and conform to the applicable authorizing documents, that funds are available, that all required clearances and approvals are obtained, and that their actual authority encompasses all of their undertakings.

§ 7-1.453 Procurement policy.

§ 7-1.453-1 General.

AID places the greatest possible authority to procure and to set policy and standards for procurement in the heads of the procuring activities. At the same time, AID follows procurement policies and practices generally established in Government procurement except as they are not adapted to the special needs of the Foreign Assistance program or AID's staffing structure.

[30 FR 12968, Oct. 12, 1965, as amended at 38 FR 28666, Oct. 16, 1973]

§ 7-1.453-2 Assistant Administrator for Program and Management Services.

Within the principles stated above, and subject to the direction of the Administrator, the Assistant Administrator for Program and Management Services will be responsible for the development and maintenance of necessary uniform procurement policies, procedures, and standards; for providing assistance to the procuring activities as appropriate; for keeping the Administrator and Executive Staff fully informed on procurement matters which should be brought to their attention; and for making recommendations as appropriate.

[32 FR 8467, June 14, 1967, as amended at 38 FR 28666, Oct. 16, 1973]

Subpart 7-1.5—Contingent Fees

§ 7-1.507 Use of Standard Form 119.

§ 7-1.507-3 Exceptions.

The exception stated in FPR 1-1.507-3(f) for contracts to be made in foreign countries will not be used.

Subpart 7-1.6—Debarred, Suspended, and Ineligible Bidders

§ 7-1.600 Scope of subpart.

See also AID Regulation 8, which is published as Part 208 of Title 22 of the Code of Federal Regulations and is also set out as AID Handbook 15. Regulation 8 applies to certain transactions financed by AID which do not fall within the coverage of AIDPR as described in AIDPR 7-1.103. The terms of actions taken against suppliers under Regulation 8 will be applied to those suppliers with respect to procurements covered by AIDPR.

[30 FR 12968, Oct. 12, 1965, as amended at 41 FR 21639, May 27, 1976]

§ 7-1.602 Establishment and maintenance of a list of firms or individuals debarred, suspended, or declared ineligible.

The Office of Small and Disadvantaged Business Utilization, AID/Washington will establish and maintain the consolidated list required by FPR 1-1.602.

[30 FR 12968, Oct. 12, 1965, as amended at 36 FR 23556, Dec. 10, 1971; 38 FR 28666, Oct. 16, 1973; 45 FR 44275, July 1, 1980]

§ 7-1.602-1 Bases for entry on the debarred, suspended, and ineligible list.

Persons named on the "List of Ineligible Suppliers" established by Regulation 8 will also be included on the consolidated list required by FPR 1-1.602. The basis for so including debarred firms is FPR 1-1.602-1(d). The basis for so including suspended firms is FPR 1-1.602-1(f). The consolidated list will indicate that the firm is included because it is on the Regulation 8 list.

§ 7-1.604 Causes and conditions applicable to determination of debarment by an executive agency.

With reference to FPR 1-1.604(b)(1) and FPR 1-1.604(c)(1), authority to approve, remove, or reduce the period of debarment is limited to the Administrator, Deputy Administrator, and Assistant Administrator for Program and Management Services.

[30 FR 12968, Oct. 12, 1965, as amended at 38 FR 28666, Oct. 16, 1973]

§ 7-1.604-1 Procedural requirements relating to the imposition of debarment.

(a) *Initiation of debarment action.* Notice of proposed debarment shall be deemed to have been received by an affected person if the notice was properly mailed to the last known address of such person.

(b) *Hearings.* (1) *Debarment without a hearing.* AID may debar a firm, individual, or an affiliate thereof without a hearing if:

(i) No hearing is requested within the period indicated in the notice described in FPR 1-1.604-1(a); or

(ii) There are no disputed questions of fact relevant to the debarment issue; or

(iii) The Administrator determines that the security interests of the United States override the interests of the supplier in an adversary hearing.

(2) *Date of the hearing.* Unless the Administrator determines that for good cause shown additional time should be granted, a hearing shall be instituted within 20 days after receipt of a request from an affected person for a hearing in response to the notice described in FPR 1-1.604-1(a).

(3) *Hearing examiner.* (i) The hearing shall be conducted before an impartial hearing examiner designated by the Administrator.

(ii) The Administrator shall not be limited in the choice of a hearing examiner to persons employed by AID or by any other agency of the U.S. Government.

(4) *Report to the Administrator.* The hearing examiner shall submit to the Administrator written findings of fact based upon the record established during the hearing and recommendations concerning the proposed debarment based upon these findings.

(5) *Findings.* (i) Findings of fact adequate to establish a cause for debarment shall be based upon substantial evidence. Standards of proof necessary for criminal conviction shall not apply.

(ii) Evidence of criminal intent shall not be necessary to establish a cause for debarment.

(iii) Findings shall not be circumscribed by technical rules of evidence.

(6) *Recommendations.* The Administrator may approve or disapprove the recommendations of the hearing examiner in whole or in part.

[42 FR 4841, Jan. 26, 1977]

§ 7-1.605 Suspension of bidders.

§ 7-1.605-2 Period and scope of suspension.

Suppliers suspended because they have been suspended under Regulation 8 will remain suspended for the period that their Regulation 8 suspension is in effect.

§ 7-1.605-3 Notice of suspension.

Inquiries concerning suspended Contractors will be referred to the Assistant Administrator for Program and Management Services.

[30 FR 12968, Oct. 12, 1965, as amended at 38 FR 28666, Oct. 16, 1973. Redesignated at 40 FR 3449, Jan. 22, 1975]

§ 7-1.605-5 Restrictions during period of suspension.

Determinations called for under FPR 1-1.605-5(a) will be made by the Administrator, by the Deputy Administrator, or by the Assistant Administrator for Program and Management Services or an officer designated by him.

[30 FR 12968, Oct. 12, 1965, as amended at 38 FR 28666, Oct. 16, 1973. Redesignated and amended at 40 FR 3449, Jan. 22, 1975]

§ 7-1.606 Agency procedure.

The Assistant Administrator for Program and Management Services is designated to act for AID and to furnish information as provided in FPR 1-1.606 (b), (c), (d), (e), and (f).

[30 FR 12968, Oct. 12, 1965, as amended at 38 FR 28666, Oct. 16, 1973]

Subpart 7-1.7—Small Business Concerns

SOURCE: 38 FR 28666, Oct. 16, 1973, unless otherwise noted.

§ 7-1.702 Small business policies.

(a) In keeping with section 602 of the Foreign Assistance Act of 1961 (22 U.S.C. 2352), as amended, AID shall,

insofar as practicable and to the maximum extent consistent with the accomplishment of the purposes of said Act, assist United States small business to participate equitably in the furnishing of supplies and services for Foreign Assistance activities.

(b) It is the policy of AID to:

(1) Fully endorse and carry out the Government's small business program for placing a fair proportion of its purchases and contracts for supplies, construction (including maintenance and repair), research and development, and services (including personal, professional, and technical services) with small business, including minority small business concerns; and

(2) Increase their participation in AID procurement.

(c) In furtherance of this policy:

(1) Program/project officers shall make positive efforts (see AIDPR 7-1.704-5) to identify potentially qualified small and minority business firms during precontract development of programs/projects and shall, with the responsible contracting officers, assure that such firms are given full opportunity to participate equitably;

(2) Small business set-asides shall be made for all contracts to be executed in AID/Washington which qualify for small business set-aside action under Subpart 1-1.7 of the Federal Procurement Regulations; and

(3) Consideration shall be given in appropriate cases to the award of the contract to the Small Business Administration for subcontracting to small business firms pursuant to section 8(a) of the Small Business Act (15 U.S.C. 637(a)).

(d) This program shall be implemented by all AID/Washington procuring activities in order to attain these policy objectives. In accordance with AIDPR 7-1.704, all AID/Washington direct-procurement requirements which exceed $5,000.00 shall be screened for small business opportunities by the Office of Small and Disadvantaged Business Utilization except those:

(1) Set-aside unilaterally or by class set-aside;

(2) Where the Contracting Officer certifies in writing that the public exigency will not permit the delay incident to screening;

(3) That will result in an institution building contract (see AIDPR 7-1.704-6(a)(3)) with an educational or nonprofit institution; or that will result in a collaborative assistance contract with an educational institution, international research center, or cooperative development organization, pursuant to AIDPR 7-4.58 and Appendix H of Handbook 14;

(4) Involving PIO/Ps and PIO/Ts for the payment of tuition and fees covering participant training at academic institutions; or

(5) Involving the acquisition of personal services by contract (see AIDPR Appendix F, Direct AID Contracts with U.S. Citizens for Personal Services Abroad).

(e) Where practicable and desirable, small business and minority business enterprise award goals will be established for the respective AID/Washington procuring activities to provide incentive for contracting personnel to increase awards to small firms. The goals will be set by the Office of Small and Disadvantaged Business Utilization after consultation with the respective head of the procuring activity (see AIDPR 7-1.206).

(f) In the event of a disagreement between the Office of Small and Disadvantaged Business Utilization and the Contracting Officer concerning: (1) A recommended set-aside, or (2) a request for modification or withdrawal of a class or individual set-aside, complete documentation of the case including the reasons for disagreement shall be transmitted within five working days to the head of the procuring activity (see AIDPR 7-1.704-6(e)) for a decision. Procurement action shall be suspended pending a decision.

(g) The above suspension shall not apply where the Contracting Officer:

(1) Certifies in writing, with supporting information, that in order to protect the public interest award must be made without delay;

(2) Promptly provides a copy of said certification to the Office of Small and Disadvantaged Business Utilization; and

(3) Includes a copy of the certification in the contract file.

(h) The Office of Small and Disadvantaged Business Utilization shall be the Small Business Advisor and Minority Business Procurement Policy Manager for all AID/Washington procuring activities.

(i) The details on the agency's direction and operation of the small business program are set forth in AIDPR 7-1.704.

(j) No decision rendered, or action taken, under the coverage set forth in AIDPR 7-1.704 shall preclude the Small Business Administration from appealing directly to the AID Administrator as provided for in Subpart 1-1.7 of the Federal Procurement Regulations.

(k) The Office of Small and Disadvantaged Business Utilization may delegate the responsibilities set forth in AIDPR 7-1.704-2(b) (8), (9), and (17) to the Director, Office of Management Operations with the power to redelegate. The delegation shall cover only supplies and services authorized to be procured by the Office of Management Operations. Responsibilities not delegated are reserved to the Office of Small and Disadvantaged Business Utilization.

[38 FR 28666, Oct. 16, 1973, as amended at 41 FR 4918, Feb. 3, 1976; 41 FR 21639, May 27, 1976; 45 FR 44275, July 1, 1980]

§ 7-1.704 Agency program direction and operation.

§ 7-1.704-1 General.

The purpose of this section is to prescribe responsibilities and procedures for carrying out the small business program policy set forth in FPR 1-1.702 and § 7-1.702 of this subpart. Small business concerns are defined in the Notice in FPR 1-1.706-5(d); in addition, small business concerns are concerns organized for profit. Nonprofit organizations are not considered small business concerns. Small minority business enterprises are defined in FPR 1-1.1310-2. Small minority business enterprises are included in the term "small business' when used in this subpart; specific reference to minority business enterprises is for added emphasis.

[46 FR 31887, June 18, 1981]

§ 7-1.704-2 The AID Office of Small and Disadvantaged Businesss Utilization.

(a) The Office of Small and Disadvantaged Business Utilization is responsible for administering, implementing, and coordinating the Agency's small business (including minority business enterprises) program.

(b) The AID Office of Small and Disadvantaged Business Utilization, which is headed by the Director, Office of Small and Disadvantaged Business Utilization, who also serves as the Minority Business Procurement Manager, shall be specifically responsible for:

(1) Developing policies, plans, and procedures for a coordinated Agency-wide small business and minority business enterprise procurement program;

(2) Advising and consulting regularly with AID/Washington procuring activities on all phases of their small business program, including, where practicable and desirable, the establishment of small business and minority business enterprise award goals;

(3) Collaborating with officials of the Small Business Administration (SBA), other Government Agencies, and private organizations on matters affecting the Agency's small business program;

(4) Developing and maintaining a Contractor's Index of bidders/offerors (annotated to identify small business and minority business enterprise firms) capable of furnishing services for use by the AID procuring activities;

(5) Cooperating with contracting officers in administering the performance of contractors subject to the Small Business and Minority Business Enterprises Subcontracting Program clauses (see 1-1.710-3(b) and 1-1.1310-2(b) of the Federal Procurement Regulations);

(6) Developing a plan of operation designed to increase the share of contracts awarded to small business concerns, including small minority business enterprises;

(7) Establishing small business class set-aside for types and classes of items of services where appropriate;

(8) Reviewing each procurement requisition (PIO/T, PIO/C or other req-

uisitioning document) to make certain individual or class set-asides are initiated on all suitable AID/Washington proposed contract actions in excess of $2,500.00 which are subject to screening (see AIDPR 7-1.704-6);

(9) Maintaining a program designed to:

(i) Locate capable small business sources for current and future procurements through GSA and other methods.

(ii) Utilize every source available to determine if an item is obtainable from small business; and

(iii) Develop adequate small business competition on all appropriate procurements;

(10) Taking action to assure that unnecessary qualifications, restrictive specifications, or other features (such as inadequate procurement leadtime) of the programming or procurement process, which may prevent small business participation in the competitive process, are modified to permit such participation where an adequate product or service can be obtained;

(11) Recommending that portions of large planned procurements or suitable components of end items or services be purchased separately so small firms may compete;

(12) On proposed non-competitive procurements, recommending to the Contracting Officer that the procurement be made competitive when, in the opinion of the Office of Small and Disadvantaged Business Utilization, there are small businesses or minority business enterprises believed competent to furnish the required goods or services, and supplying the Contracting Officer a list of such firms;

(13) Assisting small business concerns with individual problems;

(14) Promoting increased awareness by the technical staff of the availability of small business firms;

(15) Making available to GSA copies of solicitations when so requested;

(16) Counseling non-responsive or non-responsible small business bidders/offerors to help them participate more effectively in future solicitations; and

(17) Examining bidders lists to make certain that small business firms are appropriately identified and adequately represented for both negotiated and advertised procurements.

[38 FR 28666, Oct. 16, 1973, as amended at 41 FR 21639, May 27, 1976; 45 FR 44275, July 1, 1980; 46 FR 31887, June 18, 1981]

§ 7-1.704-3 AID Contracting Officers.

With respect to procurement activities within their jurisdiction, Contracting Officers are responsible for:

(a) Being thoroughly familiar with Subpart 1-1.7 of the Federal Procurement Regulations and this subpart dealing with the small business program;

(b) Screening abstracts of bids and other award data to determine set-aside potential for future procurements;

(c) Assuring that small business concerns and minority business enterprises are appropriately identified on source lists and abstracts of bids or proposals by an "S" and "M", respectively, or other appropriate symbol;

(d) Reviewing types and classes of items and services to determine where small business set-asides can be applied;

(e) Recommending that portions of large planned procurements or suitable components of end items or services be purchased separately so small firms may complete;

(f) Making a unilateral determination for total or partial small business set-asides in accordance with 1-1.706 of the Federal Procurement Regulations;

(g) Submitting proposed procurement actions (PIO/Ts, PIO/Cs, or other requisitioning documents) for AID/ Washington contracts to the Office of Small and Disadvantaged Business Utilization for screening (see AIDPR 7-1.704-6);

(h) Taking action to assure that unnecessary qualifications, restrictive specifications or other features (such as inadequate procurement leadtime) of the programming or procurement process which may prevent small business participation in the competitive process are modified to permit such participation where an adequate product or service can be obtained;

(i) Prior to rendering a final decision on a proposed non-competitive pro-

curement action, and as part of his findings and determination, the Contracting Officer shall consider the recommendations, if any, of the Office of Small and Disadvantaged Business Utilization together with the latter's list of additional sources;

(j) As appropriate, referring small business concerns, including small minority business enterprises, to the Office of Small and Disadvantaged Business Utilization for information and advice;

(k) Promoting increased awareness by the technical staff of the availability of small business concerns;

(l) Making available to the Office of Small and Disadvantaged Business Utilization copies of solicitations when requested;

(m) Assisting the Office of Small and Disadvantaged Business Utilization in counseling non-responsive or non-responsible small business bidders/offerors to help them to participate more effectively in future solicitations; and

(n) Including the Small Business and Minority Business Enterprises Subcontracting Program clauses in all contracts which meet the conditions prescribed in 1-7.710-3(b) and 1-1.1310-2(b) of the Federal Procurement Regulations.

[38 FR 28666, Oct. 16, 1973, as amended at 45 FR 44275, July 1, 1980]

§ 7-1.704-4 Heads of procuring activities.

In order for the agency small business program to be effective, the active support of top management is required. The heads of the procuring activities shall be responsible for:

(a) Rendering decisions in cases resulting from non-acceptances by their Contracting Officers of set-aside recommendations made by the Office of Small and Disadvantaged Business Utilization;

(b) Consulting with the Office of Small and Disadvantaged Business Utilization in establishing small business and minority business enterprise award goals, where practicable and desirable; and

(c) Assuring that program/project officers discharge their responsibilities set forth in AIDPR 7-1.704-5.

[38 FR 28666, Oct. 16, 1973, as amended at 45 FR 44275, July 1, 1980]

§ 7-1.704-5 Program/Project Officers.

Since the procurement process starts with the establishment of a program/project requirement, the actions of the program/project officers can affect the opportunity of small business to participate equitably; therefore, each program/project officer shall, during the formulation of programs/projects which will require contractual implementation:

(a) Consult with the Office of Small and Disadvantaged Business Utilization on the availability and capabilities of small business firms to permit making a tentative set-aside determination where appropriate; and

(b) Provide sufficient procurement leadtime in the program/project implementation schedule to allow potential small business participation.

[38 FR 28666, Oct. 16, 1973, as amended at 45 FR 44275, July 1, 1980]

§ 7-1.704-6 Small business screening procedure.

(a) *General.* All AID/Washington proposed contract actions (PIO/Ts, PIO/Cs, or other requisitioning dqcuments) in excess of $2,500.00 shall be screened by the Office of Small and Disadvantaged Business Utilization, with the exception of:

(1) Class set-asides and those unilaterally set-aside by Contracting Officers (AIDPR 7-1.704-3(f));

(2) Those where the Contracting Officer certifies in writing that the public exigency will not permit the delay incident to screening (AIDPR 7-1.704-7(b));

(3) Contracts with educational or non-profit institution, the object of which is "institution building", *i.e.*, the development of a counterpart capability in the host country by the educational or non-profit institution; or collaborative assistance contracts with educational institutions, international research centers, or cooperative development organizations pursuant to AIDPR 7-4.58 and Appendix H of Handbook 14;

(4) Those involving the payment of tuition and fees for participant training at academic institutions; and

(5) Personal services contract requirements (see AIDPR 7-1.702(d)(5)).

(b) Preparation of AID Form 1410-14 (see AIDPR 7-16.850).

(1) The Contracting Officer shall prepare the subject form in an original and 3 copies and forward the original and 2 copies to the Office of Small and Disadvantaged Business Utilization within one working day of receipt by his procuring activity of a procurement requisition (PIO/T, PIO/C, or other requisitioning document).

NOTE: An approved Noncapital Project Paper (PROP) may be substituted for the PIO/T or PIO/C if required by the urgency of the procurement.

(2) The Contracting Officer will attach to his transmittal a complete copy of the procurement request and a copy of the recommended source list as furnished by the technical office and supplemented by him.

(3) The Contracting Officer shall complete Blocks 2, 3, 4, 5, 9, and 10 (when appropriate) prior to submittal to the Office of Small and Disadvantaged Business Utilization.

(c) Screening of AID Form 1410-14 by the Office of Small and Disadvantaged Business Utilization.

(1) The Office of Small and Disadvantaged Business Utilization will screen the Contracting Officer's recommendations on set-aside potential, small business subcontracting opportunities, and section 8(a) subcontracting, and furnish him with either a written concurrence in his recommendations or written counter-recommendations on the original and duplicate copy within five working days from receipt of the form from the Contracting Officer.

(2) The Office of Small and Disadvantaged Business Utilization will complete Blocks 1, 6, 7, 8, 11, and 12 (when appropriate) prior to returning the screened form to the Contracting Officer.

(d) *Concurrence or rejection procedure.* (1) The Contracting Officer shall complete Block 13 upon receipt of the original and duplicate copy of the screened form from the Office of Small and Disadvantaged Business Utilization.

(2) If the Contracting Officer rejects a Small Business counter-recommendation, he shall return the original and duplicate forms with his written reasons for rejection to the Office of Small and Disadvantaged Business Utilization within two working days.

(3) Upon receipt of the Contracting Officer's rejection, the Office of Small and Disadvantaged Business Utilization may: (i) Accept, or (ii) appeal, the rejection. In the case of acceptance of the Contracting Officer's rejection, the Office of Small and Disadvantaged Business Utilization shall annotate Block 14 when it renders a decision and return the original form to the Contracting Officer within two working days.

(e) *Appeal procedure.* (1) When informal efforts fail to resolve the set-aside disagreement between the Contracting Officer and the Office of Small and Disadvantaged Business Utilization, the latter official may appeal the Contracting Officer's decision to the head of the procuring activity. Such an appeal will be made within five working days after receipt of the Contracting Officer's rejection.

(2) In the case of an appeal, the Office of Small and Disadvantaged Business Utilization will send the original and duplicate form, with the appeal noted in Block 14, directly to the head of the procuring activity with its written reasons for appealing. The Contracting Officer will be notified of the Office of Small and Disadvantaged Business Utilization's appeal by means of a copy of the written reasons for appealing.

(3) The head of the procuring activity shall render a decision on the appeal (complete Block 15) within three working days after receipt of same and return the original to the Office of Small and Disadvantaged Business Utilization and the duplicate to the Contracting Officer.

[38 FR 28666, Oct. 16, 1973, as amended at 41 FR 21639, May 27, 1976; 45 FR 44275, July 1, 1980; 45 FR 74923, Nov. 13, 1980; 46 FR 31887, June 18, 1981]

§ 7-1.704-7 Reports on procurement actions that are exempted from screening.

(a) *Unilateral and class set-asides.* The Contracting Officer shall prepare AID Form 1410-14 as stated in AIDPR 7-1.704-6, but forward only the duplicate copy with the documentation required by Block 5 of the form to the Office of Small and Disadvantaged Business Utilization. The original will be filed in the contract file.

(1) If, upon review of the material submitted under AIDPR 7-1.704-7(a) above, the Office of Small and Disadvantaged Business Utilization concludes that it would be practicable to accomplish all or a portion of the procurement involved under section 8(a) subcontracting, it shall so advise the Contracting Officer in writing within five days after receipt of such material.

(2) Such advice shall be considered a counter-recommendation and shall be processed in accordance with AIDPR 7-1.704-6 (d) and (e).

(b) *Public exigency exemption.* The Contracting Officer shall prepare AID Form 1410-14 as stated in AIDPR 7-1.704-6, but forward only the duplicate copy with the documentation required by Block 5 of the form to the Office of Small and Disadvantaged Business Utilization. In addition to the documentation called for in AIDPR 7-1.704-6, the Contracting Officer shall furnish a copy of his written determination exempting the procurement from screening. The determination shall cite the pertinent facts which led to his decision. This exemption is not intended to be used as a substitute for good procurement planning and lead-time; the Office of Small and Disadvantaged Business Utilization will report abuses of this exemption to the head of the procuring activity for appropriate action in accordance with AIDPR 7-1.704-4(c).

(c) *Institution building contract (IBC) exemption.* The Contracting Officer shall prepare AID Form 1410-14 as stated in AIDPR 7-1.704-6, but forward only the duplicate copy with the documentation required by Block 5 of the form to the Office of Small and Disadvantaged Business Utilization.

(d) *Personal services contract exemption.* Preparation of AID From 1410-14 is not required for personal services contracts

[38 FR 28666, Oct. 16, 1973, as amended at 44 FR 33684, June 12, 1979; 45 FR 44275, July 1, 1980]

Subpart 7-1.10—Publicizing Procurement Actions

§ 7-1.1001 General policy.

(a) Section 602 of the Foreign Assistance Act dictates that, to the greatest extent practicable and consistent with the purposes of the Act, information about purchases to be financed under the Act will be made available as far in advance as possible to suppliers in the United States, particularly small independent enterprises.

(b) (1) In furtherance of this policy, as well as the requirements set forth in FPR 1-1.1001, AID obtains the maximum practicable publicity for its direct procurements of supplies and services through publication of notice of such procurement actions in the "Commerce Business Daily".

(2) AID's Office of Small and Disadvantaged Business Utilization maintains a Contractor's Index, which serves as a reference source and an indication of a prospective contractor's interest in performing AID contracts. Prospective contractors are invited to file the appropriate form (Standard Forms 254/255, Architect-Engineer and Related Services Questionnaires; or AID Forms 1420-6, Management Consultant Questionnaire; 1420-7, Construction Contractor's Questionnaire; or 1420-19, Urban and Regional Planner Consultant Questionnaire) with AID's Office of Small and Disadvantaged Business Utilization (Department of State, Agency for International Development, Washington, D.C. 20523—Attention: Office of Small and Disadvantaged Business Utilization). These forms should be updated annually.

[30 FR 12968, Oct. 12, 1965, as amended at 35 FR 3807, Feb. 27, 1970; 38 FR 28669, Oct. 16, 1973; 41 FR 21639, May 27, 1976; 45 FR 44276, July 1, 1980]

PART 7-2—PROCUREMENT BY FORMAL ADVERTISING

Subpart 7-2.4—Opening of Bids and Award of Contract

Sec.
7-2.406-3 Other mistakes disclosed before award.
7-2.406-4 Disclosure of mistakes after award.
7-2.407 Award.
7-2.407-6 Equal low bids.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

Subpart 7-2.4—Opening of Bids and Award of Contract

§ 7-2.406-3 Other mistakes disclosed before award.

The Assistant Administrator for Program and Management Services is the designated central authority to make the determinations described in FPR 1-2.406-3.

[30 FR 12971, Oct. 12, 1965, as amended at 38 FR 28669, Oct. 16, 1973]

§ 7-2.406-4 Disclosure of mistakes after award.

The Assistant Administrator for Program and Management Services is the designated central authority to make the determinations described in FPR 1-2.406-4.

[30 FR 12971, Oct. 12, 1965, as amended at 38 FR 28669, Oct. 16, 1973]

§ 7-2.407 Award.

§ 7-2.407-6 Equal low bids.

FPR 1-2.407-6 does not apply to procurements by overseas procuring activities when equal low bids are submitted by foreign suppliers and the contract is to be performed outside the United States, its possessions, and Puerto Rico.

[30 FR 12971, Oct. 12, 1965]

PART 7-3—PROCUREMENT BY NEGOTIATION

Subpart 7-3.1—Use of Negotiation

Sec.
7-3.101-50 Justification for noncompetitive negotiation.
7-3.102-50 Adaptability to overseas conditions.
7-3.103-50 Debriefing of unsuccessful offerors.
7-3.103-51 Lead-time for preparation submission of bids or proposals.

Subpart 7-3.2—Circumstances Permitting Negotiation

7-3.200 Scope of subpart.
7-3.200-50 Negotiation authority.

Subpart 7-3.3—Determinations, Findings, and Authorities

7-3.302 Determinations and findings required.

Subpart 7-3.6—Small Purchases

7-3.600 Scope of subpart.
7-3.604-3 Agency responsibilities.
7-3.604-5 Limitations.

Subpart 7-3.7—Negotiated Overhead Rates

7-3.705 Procedure.

Subpart 7-3.8—Price Negotiation Policies and Techniques

7-3.807-2 Requirements for price or cost analysis.
7-3.807-50 Offeror's analysis of cost proposal.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

SOURCE: 30 FR 12971, Oct. 12, 1965, unless otherwise noted.

Subpart 7-3.1—Use of Negotiation

§ 7-3.101-50 Justification for noncompetitive negotiation.

(a) AID is authorized to negotiate contracts under the authority of section 633 (a) of the Foreign Assistance Act of 1961, as amended and Executive Order 11223. It is Agency policy that negotiated contracts will be awarded on a competitive basis whenever possible.

(b) There are limited circumstances where noncompetitive negotiation

may be permissible; these are listed below. In each of these cases, however, consideration of as many sources as is practicable, including informal solicitation to the maximum extent practicable, is required. In each case the contract file will include appropriate explanation and support.

(1) Contracts to be performed by the contractor in person.

(2) Contracts for goods or services by overseas procuring activities (AID Missions), where the estimated cost of the contract does not exceed $100,000.

(3) Contracts for which one source is considered to have exclusive or predominant capability by reason of experience, specialized facilities or technical competence to perform the work within the time required and at reasonable prices.

(4) Contracts for which it is determined that the required property or services are available from only one source.

(5) Amendments to contracts which provide for continuation of activities designed to meet the same goal originally established in the contract (such amendments may not extend the contract beyond the life of the project as established in the Project Paper).

(6) Contracts based on unsolicited proposals awarded pursuant to AIDPR 7-4.9.

(7) Contracts or contract amendments for which the Assistant Administrator responsible for the project or program makes a formal written determination with supporting findings, that procurement from any other source would impair foreign assistance objectives, and would be inconsistent with fulfillment of the foreign assistance program.

(c) Use of the circumstances permitting noncompetitive negotiation specified in paragraph (b) of this section requires documentation, justification, and approval. Basic documentation and justification requirements are set forth in paragraph (d) of this section. Approval authority for the various circumstances in paragraph (b) of this section are specified in paragraphs (c)(2), (3), (4), and (5) of this section.

(1) The authority to approve noncompetitive negotiation is separate from, *and in addition to*, any delegation of contracting authority. While a contracting official may have been delegated unlimited contracting authority, his/her authority to approve noncompetitive negotiation is limited by paragraphs (c)(3) and (c)(4) of this section.

(2) Authority to approve noncompetitive negotiation for procurements under paragraphs (b)(6) and (7) of this section rests with the Assistant Administrator having the program responsibility.

(3) Authority to approve noncompetitive negotiation, for procurements under paragraphs (b) (1), (3), (4) or (5) of this section executed by AID/Washington is based on the estimated cost of the procurement and is assigned as follows:

Dollar amount	Approving authority
(i) 0 to $25,000	The contracting officer.
(ii) $25,001 to $100,000	Cognizant SER/CM Division Chief.
(iii) $100,001 to $250,000	Director or Deputy Director, SER/CM.
(iv) over $250,000	The Noncompetitive Review Board.

(4) Authority to approve noncompetitive negotiation under paragraphs (b) (1), (2), (3), (4), or (5) of this section for procurements executed by an AID/Mission is also based on the estimated cost of the procurement, and is assigned as follows:

Dollar amount	Approving authority
(i) 0 to $25,000	The Mission contracting officer, if other than the Mission Director.
(ii) 0 to $100,000	The Mission Director.
(iii) over $100,000	The Mission Noncompetitive Review Board.

(5) The Mission Noncompetitive Review Board is appointed by the Mission Director, who serves as Chairman of the Review Board. As a minimum, Review Board membership must include in addition to the Chairman, the Mission or Regional Legal Advisor (or the Deputy Director if no Legal Advisor is available at the Mission), and a senior project officer not concerned with the procurement under consideration by the Review Board. The Mis-

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sion Noncompetitive Review Board has jurisdiction over Mission procurements being awarded by the Area Contracting Officer (ACO) serving the Mission up to the limit of the ACO's contracting authority, or over any Mission procurement that exceeds the Mission Director's contracting authority; *provided*, that in the latter case, the Mission Director first obtains an ad hoc redelegation of contracting authority for the procurement from SER/CM.

(d) Justifications and documentation in support of the circumstances specified in § 7-3.1-1-50(b) must be approved by the cognizant approving authority specified in § 7-3.101-50(c), and included in the contract file. In the case of Mission procurements, copies of noncompetitive justifications pursuant to § 7-3.101-50(b)(1) through (6) must be sent to AID/W, SER/CM/SD/SUP. The minimum documentation for each procurement will be a negotiation memorandum supported by:

(1) For contracts pursuant to § 7-3.101-50(b)(1), a certification that the procurement meets the criteria of, and is being awarded pursuant to § 7-3.101-50(b)(1), signed by the appropriate approving authority specified in § 7-3.101-50(c) supported by a selection memorandum from the requesting project office specifying the requirements of the procurement, what individuals were considered, and why the proposed individual was recommended.

(2) For contracts pursuant to § 7-3.101-50(b)(2), a certification that the procurement meets the criteria of, and is being awarded pursuant to § 7-3.101-50(b)(2), signed by the appropriate approving authority specified in § 7-3.101-50(c).

(3) For contracts pursuant to § 7-3.101-50(b)(3), the requesting project office shall prepare a written request for approval of an exclusive or predominant capability noncompetitive procurement. This request will include the following information, as appropriate.

(i) What sources were considered and what were the evaluation criteria used;

(ii) Basis for the decision that only one source is suitable or available, including as appropriate:

(A) What capability does the proposed contractor have which is necessary to the specific effort and makes the contractor clearly more suitable than another in the same general field?

(B) What prior experience of a highly specialized nature does the contractor possess which is vital to the proposed effort?

(C) What facilities or equipment does the contractor have which are specialized and vital to the effort?

(D) Does the contractor have a substantial investment of some kind which would have to be duplicated at Government expense by another source entering the field?

(E) If time schedules are involved, why are they critical and why can the proposed contractor best meet them?

(F) Does the proposed contractor have personnel considered predominant experts in the particular field?

(iii) A certification with supporting documentation that the special capabilities of the recommended source are necessary for the project, and not merely desirable. The request shall be submitted to the contracting officer, who will obtain the approval of the appropriate approving authority specified in § 7-3.101-50(c).

(4) For contracts pursuant to § 7-3.101-50(b)(4), a certification with supporting documentation by the requesting project office that the required property or services are available from only one source. This certification must be approved by the appropriate approving authority specified in § 7-3.101-50(c).

(5) For procurements pursuant to § 7-3.101-50(b)(5), a certification signed by the contracting officer that the procurement meets the criteria of, and is being awarded pursuant to § 7-3.101-50(b)(5), and evidence of approval by the appropriate approving authority specified in § 7-3.101-50(c).

(6) For procurements under paragraph (b)(6) of this section, a copy of the cognizant Assistant Administrator's approval and project officer's certification required by § 7-4.910, together with a certification by the contract-

ing officer that the procurement meets the criteria in paragraph (b)(6) of this section. No further documentation or approval related to noncompetitive procurement is required.

(7) For procurements pursuant to § 7-3.101-50(b)(7), a copy of the findings and determination issued by the Assistant Administrator responsible for the project or program will be placed in the contract file. No further documentation or approval related to noncompetitive procurement will be required for procurements pursuant to § 7-3.101-50(b)(7).

[43 FR 24839, June 8, 1978, as amended at 46 FR 62278, Dec. 23, 1981]

§ 7-3.102-50 Adaptability to overseas conditions.

In addition to the factors set forth in FPR 1-3.102, AID will consider the adaptability of the prospective Contractor and its employees to employment and residence in the overseas location or locations where work is to be performed.

§ 7-3.103-50 Debriefing of unsuccessful offerors.

(a) FPR 1-3.103(b) provides general guidance on post-award notification and debriefing of unsuccessful offerors. This AIDPR 7-1.103-50 provides additional guidance regarding notification and debriefing requirements and procedures.

(b) *Notification.* (1) The FPR provides for notification and debriefing *after* award. However, there are circumstances which make it proper to notify unsuccessful offerors *prior* to award; these are:

(i) When the procurement is limited to educational institutions or international research centers, pursuant to AIDPR 7-4.57;

(ii) When it is expected that negotiations with offerors whose proposals are in competitive range are likely to exceed 30 days; or

(iii) When the procurement involves a small business set-aside under a negotiated procurement.

Notifications pursuant to paragraph (b)(1)(i) of this section, should be limited to a statement that the unsuccessful offeror's proposal was not in competitive range, advising that further negotiations with the offeror are not contemplated, and that no revised proposal will be considered. Notifications pursuant to paragraph (b)(1)(iii) shall be issued upon final completion of negotiations and determinations of responsibility, but prior to award. The contracting officer shall inform each unsuccessful offeror by written notice of the name and location of the apparently successful offeror(s). Each apparently unsuccessful offeror should be advised that any subsequent revisions of his proposal will not be considered, since no further negotiations are contemplated. No further contact with the contracting officer should be made regarding the procurement unless the unsuccessful offeror has grounds to challenge the small business size status of the apparently successful offeror(s).

(2) Except as provided in paragraph (b)(1) of this section, notification of unsuccessful offerors will be made *after* award. Following the award of any negotiated contract over $10,000, all unsuccessful offerors will be promptly notified that their offer has not been accepted. It is not necessary to volunteer a debriefing in this notification, but the contracting officer may do so if desired. The notification will, as a minimum, tell the unsuccessful offerors the name(s) and address(es) of the contractor(s) receiving the award, the contract number(s), and the amount(s). The notification should also include, *in general terms,* the reasons why the unsuccessful offeror's proposal was rejected.

(c) *Debriefing.* (1) If, after-post award notification, an unsuccessful offeror requests a debriefing, the contracting officer should take the following steps:

(i) Notify the cognizant project office, and arrange to have a project officer who was directly involved in the selection made available.

(ii) Establish a mutually convenient time for the project office, the contracting office, and the unsuccessful offeror, for the debriefing.

(iii) The cognizant project officer and negotiator should have a pre-debriefing meeting to establish the con-

tents of the debriefing (see paragraph (c)(2) of this section).

(iv) Conduct the debriefing (see paragraph (c)(2) of this section).

(v) A summary of the debriefing will be retained as part of the contract file.

(2) *Conduct of post-award debriefing.* (i) It is essential that debriefings be conducted in a scrupulously fair, objective, and impartial manner. Debriefing information given unsuccessful offerors shall be factual and consistent with the evaluation. While offerors should be informed of the areas in which their technical or management proposals were weak or deficient, point-by-point comparisons with the technical or management proposals of the other offerors shall not be made. An offeror may be told the quantitative values attached to the technical criteria, including any minimum rankings necessary for acceptability. He may also be told his score both overall or for each single criterion. The firm being debriefed shall not be permitted to examine or review any part of any other firm's proposal. They should be advised to put any such requests in writing to the Freedom of Information Officer.

(ii) Debriefings shall not reveal:

(A) Trade secrets;

(B) Privileged or confidential manufacturing processes and techniques;

(C) Commercial and financial information which is privileged or confidential; or

(D) The relative merits or technical standing of other competitors or their evaluation scores. An offeror shall not be allowed to see, or be furnished with, copies of AID's evaluation plan, the evaluation of any other proposal, or the selection memorandum.

[45 FR 44276, July 1, 1980]

§ 7-3.103-51 Lead-time for preparation and submission of bids or proposals.

(a) Prospective offerors should be allowed sufficient lead-time to adequately prepare their bids or proposals. The following suggested lead-times are established as the normal minimum lead-times for the procurements described. If the contracting officer determines that circumstances require lead-times shorter than those specified below, he or she must prepare a written statement explaining the circumstances and the basis for his/her determination. This statement must be included in the contract file.

(b) Suggested minimum lead times. (Note: the suggested lead times which follow cover the period from the estimated date the announcement will be published in the *Commerce Business Daily*, or when responses are solicited directly, from the estimated date the offerors will receive the request for proposal, to the time when responses are due to the contracting officer.)

(1) Not less than 20 calendar days when procuring standard commercial (off the shelf) items or services;

(2) Not less then 30 calendar days when procuring other than standard commercial items or services;

(3) Not less than 45 days when procuring other than standard commercial items or services from U.S. sources that involve any overseas performance or use; and

(4) Not less than 60 days when procuring services of an educational institution or international research center under the selection procedures established in AIDPR 7-4.57 and 7-4.58.

[46 FR 31887, June 18, 1981]

Subpart 7-3.2—Circumstances Permitting Negotiation

§ 7-3.200 Scope of subpart.

§ 7-3.200-50 Negotiation authority.

All negotiated AID contracts are negotiated under the authority of section 633 of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223, May 12, 1965, 30 FR 6635. The files of negotiated AID contracts shall cite, as the circumstance permitting negotiation, FPR 1-3.215 ("Otherwise authorized by law"). No other circumstances as set forth in FPR 1-3.2 need be cited.

[42 FR 4841, June 26, 1977]

Subpart 7-3.3—Determinations, Findings, and Authorities

§ 7-3.302 Determinations and findings required.

The requirement of FPR 1-3.302(b) shall not apply to negotiated amendments to cost reimbursement contracts. The original determination and findings justifying the initial use of a cost reimbursement- type contract shall be deemed applicable to all subsequent amendments to said contracts.

[38 FR 28670, Oct. 16, 1973]

Subpart 7-3.6—Small Purchases

§ 7-3.600 Scope of subpart.

The $10,000 ceiling applies to the cost of supplies and services, exclusive of the cost of transportation and other accessorial costs if their destination is outside the United States.

[30 FR 12971, Oct. 12, 1965, as amended at 41 FR 21639, May 27, 1976]

§ 7-3.604-3 Agency responsibilities.

Each overseas procuring activity is responsible for developing instructions for the guidance of its personnel and procedures which are adapted to local requirements and which conform with and implement FPR 1-3.604. They will identify the specific documentation required to support each imprest fund transaction, which will include an itemized receipt from the vendor in accordance with FPR 1-3.604-6(c) and, when appropriate, a certificate of inspection or manufacturer's guarantee or warranty.

§ 7-3.604-5 Limitations.

Exceptions or additions are in effect for certain overseas procuring activities. Requests by overseas procuring activities for further exceptions or additions will be addressed to the Director, Office of Management Operations, AID/Washington, for coordination with General Services Administration and the Treasury Department.

[30 FR 12971, Oct. 12, 1965, as amended at 38 FR 28670, Oct. 16, 1973]

Subpart 7-3.7—Negotiated Overhead Rates

§ 7-3.705 Procedure.

Negotiated indirect cost rates may be established in a Negotiated Indirect Cost Rate Agreement (Form AID 1420-47) as set forth in AIDPR 7-16.557, executed by both parties. Such Agreement is automatically incorporated in each contract or grant or other agreement between the parties and shall specify: (a) The final rate(s), (b) the base(s) to which the rate(s) apply, (c) the period(s) for which the rate(s) apply, (d) the items treated as direct costs, and (e) the contracts and/or grants and/or other agreements to which the rate(s) apply. The Negotiated Indirect Cost Rate Agreement shall not change any monetary ceiling, obligation, or specific cost allowance or disallowance provided for in each contract or grant or other agreement between the parties.

[38 FR 28670, Oct. 16, 1973, as amended at 45 FR 44276, July 1, 1980]

Subpart 7-3.8—Price Negotiation Policies and Techniques

§ 7-3.807-2 Requirements for price or cost analysis.

§ 7-3.807-50 Offeror's analysis of cost proposal.

(a) The Offerors Analysis of Cost Proposal (form AID 1420-18) provides for a standardized analysis of estimated costs, suitable for detailed review, to be submitted by an offeror. Except as provided in paragraph (b) of this section, the Offerors Analysis of Cost Proposal shall be used for all negotiated procurements for which written cost or pricing data is required under FPR 1-3.807-3, and may be used in other procurements at the discretion of the contracting officer. The offeror must also submit supplementary information as detailed on the form AID 1420-18.

(b) The contractor or prospective contractor may submit the information required by the form set forth above in a different format, acceptable to the contracting officer, when re-

quired for a more effective and efficient presentation of cost or pricing information, or when the contractor's or subcontractor's accounting system makes the use of the prescribed format impracticable: *Provided,* That in such cases the information furnished includes pertinent details as to cost elements and the specific statements, authorization, and certification required by the prescribed format.

[35 FR 11392, July 16, 1970, as amended at 45 FR 44276, July 1, 1980]

PART 7-4—SPECIAL TYPES AND METHODS OF PROCUREMENT

Subpart 7-4.8—Consulting Services, Studies, and Reports

Sec.
7-4.800 Scope of subpart.
7-4.802 Definitions—consulting services.
7-4.802-50 Definitions—studies and reports excluded.
7-4.803 Contracting requirements—consulting services.
7-4.803-50 Contracting requirements—studies and reports.
7-4.804 Contract data reporting.
7-4.804-50 Identifying contracts—consultant services, studies, and reports.

Subpart 7-4.9—Unsolicited Proposals

7-4.903 Agency program direction and operation.
7-4.905 Advance guidance.
7-4.908 Agency point of contact.
7-4.909 Receipt, review, and evaluation.
7-4.910 Method of procurement.

Subpart 7-4.10—Architect-Engineer Services

7-4.1003 Public announcements.
7-4.1004-1 Establishment of architect-engineer evaluation boards.
7-4.1004-2 Functions of the evaluation boards.
7-4.1004-3 Evaluation criteria and selection memorandum.
7-4.1004-4 Action by Agency head or his authorized representative.
7-4.1004-5 Procedure for procurements estimated not to exceed $10,000.
7-4.1005-3 Independent Government cost estimate.

Subpart 7-4.55—Pharmaceutical Products

7-4.5500 General.

Subpart 7-4.56—General Selection Procedure

Sec.
7-4.5600 Scope of subpart.
7-4.5601 Definition.
7-4.5602 Applicability.
7-4.5604 Sources.
7-4.5605 Solicitation.
7-4.5606 Request for proposal.
7-4.5607 Evaluation of proposals.
7-4.5608 Selection of offerors for negotiation and award.

Subpart 7-4.57—Educational Institution and International Research Center Selection Procedure

7-4.5700 Scope of subpart.
7-4.5701 Definitions.
7-4.5702 Applicability.
7-4.5704 Solicitation, evaluation, and selection procedures.

Subpart 7-4.58—Collaborative Assistance Selection Procedure

7-4.5800 Scope of subpart
7-4.5801 Definition.
7-4.5802 Applicability.
7-4.5804 Determination.
7-4.5805 Evaluation and selection.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381, E.O. 10973, November 3, 1961, 26 FR 10469; 3 CFR 1959-63 Comp.; 41 CFR 7-1.104.4, unless otherwise noted.

Subpart 7-4.8—Consulting Services, Studies, and Reports

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 424, as amended; (22 U.S.C. 2381).

SOURCE: 46 FR 10913, Feb. 5, 1981, unless otherwise noted.

§ 7-4.800 Scope of subpart.

This subpart implements and supplements Subpart 1-4.8—Consulting Services, of the Federal Procurement Regulations (FPR). It provides supplementary, AID-Specific examples of activities excluded from the definition of consulting services; and establishes procedures for determination, justification, approval, and reporting of such services, as required by OMB Circular A-120 and Subpart 1-4.8 of the FPR. In addition, this subpart establishes special procedures for determination, justification, and approval of contracts for studies or reports in §§ 7-4.802-50, 7-4.803-50, and 7-4.804-50. Finally,

this subpart establishes special marking requirements in § 7-1.804-50 for contracts for consulting services, and for contracts requiring a written report or study, when the report or study represents essentially the full cost of the contract.

§ 7-4.802 Definitions—consulting services.

Within the specific context of AID's operations, any consulting services, for which the primary beneficiary is the host country, are not considered to be consulting services.

§ 7-4.802-50 Definitions—studies and reports excluded.

The following general categories of activities are not considered to be studies or reports covered by this Subpart 7-4.8:

(a) Reports prepared as an incidental part of other services provided to AID or foreign governments (for example, progress reports prepared by contractors providing ongoing technical assistance in a bilateral project);

(b) Reports and studies prepared pursuant to AID-financed host country contracts if the primary beneficiary of the services provided is the host country;

(c) Reports and studies provided under a project-funded direct AID contract where AID is merely acting as agent for the host government in dealing with a contractor and the real party in interest is the host government;

(d) Reports and studies prepared pursuant to grants or cooperative agreements.

§ 7-4.803 Contracting requirements—consulting services.

(a) In cases where a single contract finances activities included within the definition of consulting services, and activities excluded from the definition, the contracting officer is responsible for determining whether the primary purpose of the contract is consulting services, in which case the contract will be classed as a consulting services contract.

(b) A signed justification and approval, as specified in paragraph (c) of this section must accompany each request for a contract for consulting services. If the contracting officer determines that a requested contract is for consulting services, and the required justification and approval has not been prepared, the request will be returned to the cognizant project office, together with a memorandum stating that the requested contract has been determined to be for consulting services; that justification and approval is required; and that the request for contract services will be acted upon when it is returned accompanied by the required justification and approval.

(c) The justification and approval must be clearly identified as a justification for consulting services, and must provide the following information:

(1) *Need and Utilization:* State concisely the specific need for procuring the consulting service, including the objectives and the anticipated benefits for the Agency. State the estimated cost of the services, and evaluate the cost in terms of anticipated utilization of the work product.

(2) *Review of Prior Work:* Briefly describe efforts made to ensure that the proposed consulting service does not, in the given circumstances, duplicate work conducted previously. Where appropriate, describe the results of an AID Data Bank (located in the Office of Development Information and Utilization, Bureau for Development Support, DS/DIU) search.

(3) *In-House Capability:* Describe the expertise needed for the service and state whether such expertise exists within the Agency. If it is found that the expertise does exist in the Agency, and is available for assignment to the work, state why Agency personnel are not being assigned to the task.

(d) The justification must be approved by an officer one level above the organizational unit within a Bureau or Office requesting the service but two levels above during the fourth quarter of the fiscal year. For Mission-awarded direct contracts, these guidelines regarding approval levels should be followed whenever possible; however, throughout the fiscal year, the approval officer need

be no higher than the principal AID Officer at the post.

(e) *Organizational conflict of interest.* (1) As required by FPR 1-4.803(a)(4), offerors must disclose possible conflicts of interest. The offeror will be required to submit the following representation with its proposal:

"ORGANIZATIONAL CONFLICTS OF INTEREST REPRESENTATION

(i) The offeror represents, to the best of its knowledge and belief, that:

The award to it of a contract or the modification of an existing contract does ( ) or does not ( ) involve an organizational conflict of interest.

(ii) The term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including its chief executives, directors, proposed consultants or subcontractors) has interest which: (A) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product, or, (B) may result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(iii) The term "contractor" means any person, firm, unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in FPR 1-1.601-1(e)."

(2) If the offeror indicates that there are organizational conflicts of interest in the "Organizational Conflicts of Interest Representation," the offeror shall provide a statement which describes in a concise manner all relevant facts concerning any present or current planned interest (financial, contractual, organizational, or otherwise) relating to the work to be performed in the proposed contract and bearing on whether the offeror has a possible organizational conflict of interest with respect to being able to render impartial, technically sound, and objective assistance or advice, or being given an unfair competitive advantage. The offeror may also provide relevant facts that show how its organizational structure and/or management systems limit its knowledge of possible organizational conflicts of interest relating to other divisions or sections of the organization and how that structure or system would eliminate or neutralize such organizational conflict.

(3) The contract clause entitled "Organizational Conflicts of Interest" set forth in Part 7-7 of the AIDPR shall be included in every contract awarded pursuant to this Subpart 7-4.8.

§ 7-4.803-50 Contracting requirements—studies and reports.

(a) The contracting officer is responsible for determining whether the primary purpose of a requested solicitation or procurement action, regardless of dollar value, is for a study or report, in which case the contract will be classed as a contract for a report or study. The contracting officer's decision shall be final.

(b) A signed justification and approval, as specified in paragraph (c) of this section must accompany each request for a contract for studies or reports. If the contracting officer determines that a requested contract is for studies or reports, and the required justification and approval has not been prepared, the request will be returned to the cognizant project officer, together with a memorandum stating that the requested contract has been determined to be for studies or reports; that justification and approval is required; and that the request for contract services will be acted upon when it is returned accompanied by the required justification and approval.

(c) The justification and approval must be clearly identified as a justification for studies or reports, and must provide the following information:

(1) *Need and Utilization:* State concisely the specific need for procuring the study or report, including the objectives and the anticipated benefits for the Agency. State the estimated cost of the service, but not the cost of individual reports and studies if they form only a part of the services being provided, and evaluate the cost in terms of anticipated utilization of the work product.

(2) *Review of Prior Work:* Briefly describe efforts made to ensure that the proposed study or report does not, in the given circumstances, duplicate work conducted previously. Where ap-

propriate, describe the results of an AID Data Bank (located in the Office of Development Information and Utilization, Bureau for Development Support, DS/DIU) search.

(3) *In-House Capability:* Describe the expertise needed for the study or report and state whether such expertise exists within the Agency. If it is found that the expertise does exist in the Agency, and is available for assignment to the work, state why Agency personnel are not being assigned to the task.

(d) The justification must be approved by an officer one level above the organizational unit within the Bureau or Office requesting the study or report but two levels above during the fourth quarter of the fiscal year. For Mission-awarded direct contracts, these guidelines regarding approval levels should be followed whenever possible; however, throughout the fiscal year, the approving officer need be no higher than the principal AID Officer at the post.

(e) *Organizational conflict of interest.* Paragraph (e) of AIDPR 7-4.803 is applicable to contracts for studies or reports.

§ 7-4.804 Contract data reporting.

Within AID, input into the Federal Procurement Data System is accomplished through the Contract On-Line Reporting System. The contracting officer is responsible for insuring that contracts for consulting services or studies or reports are identified as such on Form AID 1420-49, the Contract/Grant/Cooperative Agreement Data Sheet.

§ 7-4.804-50 Identifying contracts—consultant services, studies, and reports.

(a) *Contracts for consultant services.* The contracting officer is responsible for identifying all contracts, including purchase orders, work orders, and amendments thereto, determined to be for consulting services in accordance with AIDPR 7-4.803. All copies of such contracts are to be legibly marked "Consulting Services" on the upper right-hand corner of the cover page of the contract.

(b) *Contracts for reports or studies.* If a contract requires preparation of a report or study, whether or not the contract is for consulting services, and the cost of the report or study is essentially the full cost of the contract, purchase order or work order, the contracting officer shall:

(1) Legibly mark all copies of the contract "Report" on the upper right-hand corner of the cover page of the contract (if the contract is also a consulting services contract it should be marked "Consulting Services—Report"); and

(2) If the contract is for preparation of a report or study as defined in paragraph (b) of this section; *and* if it is funded by Fiscal Year 1980 or 1981 appropriations, then a special provision must be included in the contract schedule requiring the contractor to include the cost of the report or study on the front cover of the report or study.

[46 FR 10913, Feb. 5, 1981, as amended at 47 FR 13145, Mar. 29, 1982]

Subpart 7-4.9—Unsolicited Proposals

SOURCE: 43 FR 24841, June 8, 1978, unless otherwise noted.

§ 7-4.903 Agency program direction and operation.

(a) AID encourages the submission of unsolicited proposals which contribute new ideas consistent with and contributing to the accomplishment of the Agency's objectives. However, the requirements for contractor resources are normally quite program specific, and thus widely varied, and must be responsive to host country needs. Further, AID's projects are usually designed in collaboration with the cooperating country. These factors can limit both the need for, and AID's ability to use unsolicited proposals. Therefore, prospective offerors are encouraged to contact AID to determine the Agency's technical and geographical requirements as related to the offeror's interests before preparing and submitting a formal unsolicited proposal.

(b) AID's basic policies and procedures regarding unsolicited proposals are those established in FPR 1-4.9 and this Subpart.

(c) For detailed information on unsolicited proposals, see AIDPR 7-4.905; for initial contract point within AID, see AIDPR 7-4.908.

§ 7-4.905 Advance guidance.

(a) Free information concerning AID's policies and procedures for unsolicited proposals is available from the Department of State, Agency for International Development, Washington, D.C. 20523, to the attention of either PRE/SDB/SB, Room 633 PP or S&T/PO/RES, Room 214E RPC.

(b) The information available concerns:

(1) Contact points within AID;

(2) Definitions;

(3) Characteristics of a suitable proposal;

(4) Determination of contractor responsibility;

(5) Organizational conflicts of interest;

(6) Cost sharing; and

(7) Procedures for submission and evaluation of proposals.

[43 FR 24841, June 8, 1978, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-4.908 Agency point of contact.

Initial inquiries and subsequent formal unsolicited proposals (other than research) should be submitted to the Department of State, AID, Washington, D.C. 20523, Attention: PRE/SDB/SB, Room 633 PP. Formal unsolicited proposals for research should be submitted to the Department of State, AID, Washington, D.C. 20523, Attention: S&T/PO/RES, Room 214E RPC.

[43 FR 24841, June 8, 1978, as amended at 45 FR 44276, July 1, 1980; 47 FR 13145, Mar. 29, 1982]

§ 7-4.909 Receipt, review, and evaluation.

AID follows the policies and procedures established in FPR 1-4.9, particularly 1-4.909 and 1-4.910.

§ 7-4.910 Method of procurement.

The justification for noncompetitive procurement based on an unsolicited proposal required by FPR 1-4.910(b) must be approved by the Assistant Administrator primarily responsible for the activity; in addition, each such justification will include a certification from the project officer that neither he/she, nor, to the best of his/her knowledge and belief, any other AID employee solicited the proposal from the offeror or had other prior contact with the offeror regarding the subject matter of the proposal other than to convey to the offeror an understanding of AID's mission and needs relative to the type of effort contemplated in the offer.

Subpart 7-4.10—Architect-Engineer Services

SOURCE: 39 FR 21127, June 19, 1974, unless otherwise noted.

§ 7-4.1003 Public announcements.

(a) To ensure the broadest publicity concerning the Government's interest in obtaining architect-engineer services, the contracting officer shall develop notices in accordance with FPR 1-1.1003 with respect to individual projects.

(b) A Contractor's Index is maintained in Washington by the AID Office of Small and Disadvantaged Business Utilization. Architect-engineers wishing to perform contracts for AID should file the appropriate form with that office, as provided in AIDPR 7-1.1001 (b). Procurements are publicized in the "Department of Commerce Synopsis", as provided in FPR 1-1.10 and AIDPR 7-1.10.

[39 FR 21127, June 19, 1974, as amended at 45 FR 44276, July 1, 1980]

§ 7-4.1004-1 Establishment of architect-engineer evaluation boards.

(a) The Director, Office of Engineering, or the chief engineer at an AID mission is the designated representative of the Agency head for the establishment of architect-engineer evaluation boards.

(b) No firm or organization shall be eligible for consideration for a contract where its principals or associates participated as a member of the evaluation board in the selection process for that project.

(c) Each evaluation board will include a representative of the contract-

ing officer and, as appropriate, the cognizant bureau.

§ 7-4.1004-2 Functions of the evaluation boards.

Agency architect-engineer evaluation boards shall perform the following functions:

(a) Utilize current data files on architect-engineer firms as collected by the AID Office of Small and Disadvantaged Business Utilization, including information on the qualifications of their members and key employees and past experience on various types of engineering and construction projects. The Standard Forms 254 and 255, supported by required photographs and any supplemental data requested in the notice required by FPR 1-1.1003-3 shall be used for this purpose. Information from other sources (such as other clients, other members of the profession, managers or occupants of facilities previously designed, assessments by the procuring agency itself on prior projects awarded to a firm) may also be included in the files;

(b) When procurement of architect-engineer services is proposed and following publication of a notice as required by FPR 1-1.1003-3, the board shall review the data files on eligible firms including files established on receipt of Standard Forms 254 and 255 and any supplemental data required in response to the public notice of a particular contract, and shall evaluate the firms in accordance with AIDPR 7-4.1004-3. After making this review and technical evaluation, the board shall hold discussions with not less than three of the firms deemed most highly qualified regarding anticipated concepts and relative utility of alternative methods of approach for furnishing the required services. Oral discussions are preferred, but, if deemed appropriate, a written questionnaire may be used. Overseas missions are encouraged to use AID/W engineering staff to conduct oral discussions in the United States when face-to-face discussions at the mission become prohibitively expensive. In so doing, architect-engineer fees will not be a consideration and will not be discussed; and

(c) Prepare a selection memorandum recommending no less than three firms which are considered most highly qualified to perform the required services for submission to the head of the procuring activity for his approval. This selection memorandum shall include the information specified in AIDPR 7-4.1004-3(b).

[39 FR 21127, June 19, 1974, as amended at 41 FR 21639, May 27, 1976; 45 FR 44277, July 1, 1980]

§ 7-4.1004-3 Evaluation criteria and selection memorandum.

(a) In evaluating architect-engineer firms, the architect-engineer evaluation board shall apply the following criteria, other criteria established by Agency regulations, and any criteria set forth in the public notice on a particular contract:

(1) Specialized experience of the firm (including each member of joint venture or association) with the type of service required;

(2) Capacity of the firm to perform the work (including any specialized services) within the time limitations;

(3) Past record of performance on contracts with AID or other Government agencies and private industry with respect to such factors as control of costs, quality of work, and ability to meet schedules, to the extent such information is available;

(4) Ability to assign an adequate number of qualified key personnel from the organization, including a competent supervising representative having considerable experience in responsible positions on work of a similar nature;

(5) The portions of the work the architect-engineer is able to perform with its own forces when required;

(6) Ability of the architect-engineer to furnish or to obtain required materials and equipment;

(7) If the geographical or topographical aspects of the project are deemed vital, familiarity with the locality where the project is situated;

(8) Financial capacity;

(9) Responsibility of the architect-engineer under standards provided in FPR 1-1.1203-1 and 1-1.1203-2. No contract may be awarded to a contractor that does not meet these standards;

(10) Volume of work previously awarded to the firm by the Agency, with the object of effecting an equitable distribution of architect-engineer contracts among qualified firms. Each architect-engineer evaluation board shall give favorable consideration, to the fullest extent practicable, to the most highly qualified firms that have not had prior experience on Government projects (including small business firms and firms owned by the socially and/or economically deprived).

(b) The evaluation board shall prepare a selection memorandum for the approval of the head of the procuring activity. The selection memorandum will be signed by the board chairman and cleared by each board member. The selection memorandum shall include the following information:

(1) A listing by name of all the firms reviewed by the board;

(2) A listing of the evaluation criteria applied;

(3) An analysis of the selection showing the rationale for the board's recommendation;

(4) The board's recommendation of the three most highly qualified firms, in order of preference;

(5) An independent Government cost estimate. The evaluation board shall require the project engineer to develop an independent Government estimate of the cost of the required architect-engineer services. Consideration shall be given to the estimated value of the services to be rendered, the scope, complexity, and the nature of the project and the estimated costs expected to be generated by the work. The independent Government estimate shall be revised as required during negotiations to correct noted deficiencies and reflect changes in, or clarification of, the scope of the work to be performed by the architect-engineer. A cost estimate based on the application of percentage factors to cost estimates of the various segments of the work involved, e.g., construction project, may be developed for comparison purposes, but such a cost estimate shall not be used as a substitute for the independent Government estimate.

§ 7-4.1004-4 Action by Agency head or his authorized representative.

(a) The head of the procuring activity or his authorized designee shall review the selection memorandum and shall either approve it or return it to the board for reconsideration for specified reasons.

(b) Approval of the selection memorandum by the head of the procuring activity or his authorized designee shall serve as authorization for contracting officer to commence negotiation.

§ 7-4.1004-5 Procedure for procurements estimated not to exceed $10,000.

References to FPR 1-4.1004-2 (b) and (c) contained in FPR 1-4.1004-5 shall be construed as references to AIDPR 7-4.1004-2 (b) and (c).

§ 7-4.1005-3 Independent Government cost estimate.

See AIDPR 7-4.1004-3(b)(5).

Subpart 7-4.55—Pharmaceutical Products

§ 7-4.5500 General.

Section 606(c) of the Foreign Assistance Act bars procurement by the Government of drug and pharmaceutical products manufactured outside the United States if their manufacture involves the use of or is covered by an unexpired U.S. patent which has not been held invalid by an unappealed or unappealable court decision unless the manufacture is expressly authorized by the patent owner. Applicable policies and procedures are set forth in AID Handbook 15, AID-Financed Commodities, and in AID Handbook 1, Supplement B, Procurement Policies, Chapter 4C3.

[30 FR 12973, Oct. 12, 1965, as amended at 41 FR 4918, Feb. 3, 1976; 45 FR 44277, July 1, 1980]

Subpart 7-4.56—General Selection Procedure

SOURCE: 41 FR 4919, Feb. 3, 1976, unless otherwise noted.

§ 7-4.5600 Scope of subpart.

This subpart prescribes policies and procedures for the selection of contractors for negotiated AID direct contracts for technical assistance (see §§ 7-4.5601 and 7-4.5602 of this subpart).

§ 7-4.5601 Definition.

All services provided to or on behalf of a cooperating country by means of a negotiated AID direct contract shall be negotiated in accordance with this subpart except:

(a) Architect-engineer services (see Subpart 7-4.10 of this part);

(b) Projects which have been determined to require the services of an educational institutional or international research center (see Subpart 7-4.57 of this part);

(c) Collaborative assistance (see Subpart 7-4.58 of this part); or

(d) Contracts negotiated non-competitively pursuant to § 7-3.101-50.

[41 FR 4919, Feb. 3, 1976, as amended at 45 FR 44277, July 1, 1980]

§ 7-4.5602 Applicability.

The provisions of this subpart are applicable to all negotiated AID direct contracts as defined in § 7-4.5601.

§ 7-4.5604 Sources.

(a) Consistent with FPR 1-1.301 and 1-3.802(b), all contracts shall be made on a competitive basis to the maximum practicable extent.

(b) Advance publicity and solicitations for contracts shall indicate whether proposals are to be limited to commercial sources or if proposals will be accepted from non-commercial sources (see § 7-1.1003-7).

§ 7-4.5605 Solicitation.

(a) Proposals should be invited from a sufficient number of sources to insure competition to the maximum practicable extent (see FPR 1-1.302, 1-1.1003, and 1-3.101). Availability of the request for proposal (RFP) will be synopsized in the Commerce Business Daily, as required by the FPR.

(b) The requirements for competition to the maximum practicable extent shall be deemed satisfied when the selection of a contractor has been made pursuant to the procedures prescribed in this subpart.

(c) The project officer shall consult the Contractor's Index maintained in the AID Office of Small and Disadvantaged Business Utilization, and if appropriate, the Registry of Institutional Resources maintained by the BIFAD staff, to develop a recommended list of all potential contractors. He shall transmit the list to the contracting officer together with a statement of the qualifications and areas of expertise considered essential to successfully carry out the project; additional sources may be added by the contracting officer.

(d) The provisions of Subpart 7-1.7 of this chapter regarding small business requirements shall be observed.

[41 FR 4919, Feb. 3, 1976, as amended at 45 FR 44277, July 1, 1980]

§ 7-4.5606 Request for proposal.

(a) All sources requesting a copy of the RFP shall be sent one. The statement of work in the RFP must be clear, complete, and individually tailored to the specific requirement through the combined efforts of technical and procurement personnel. Careful distinction must be drawn between level-of-effort work statements which essentially require the furnishing of technical or professional effort and a report of the results of that effort, and task completion work statements which require specific development of end items, new methods, demonstrations, or other tangible results (see FPR 1-3.405-5(e)).

(b) *Cost or pricing data.* Requests for proposals shall include requirements for the submission of cost or pricing data (see § 7-3.807-3 and FPR 1-3.807-3).

(c) *Special provisions.* Each request for proposals (RFP) shall include those special provisions which will be applicable during the performance of the resultant contract. As appropriate, this may include:

(1) For level-of-effort work statements an estimate of professional or technical man-months, or other suitable measure of effort to perform the required work may be included in the request for proposal in order to estab-

lish a common ground for realistic proposals. This man-month estimate is necessary when it is not possible to precisely describe the magnitude of the proposed work. Where the estimated level of effort is furnished, it should be made clear that such information is advisory only and is not cause for restricting what the contractor believes to be a meritorious technical proposal.

(2) Logistic support to be provided by the contractor, or provided or reimbursed by AID or the cooperating country.

(3) A statement that, depending on the source selected after evaluation of proposals, the appropriate contract clauses, as set forth in Part 7-7 of this chapter, will be incorporated in the contract.

(d) *Evaluation criteria.* The criteria to be used in evaluating an organization's capability and approach to the proposed work must be set forth in the request for proposal. It is essential that organizations know the standards against which their proposals will be compared. While the numerical weight assigned to each criterion need not be shown, the criteria shall be listed in order of relative importance.

[41 FR 4919, Feb. 3, 1976, as amended at 45 FR 44277, July 1, 1980]

§ 7-4.5607 Evaluation of proposals.

(a) *AID evaluation committees.* An evaluation committee shall be established for each proposed procurement. In each case, these committees shall be composed of a Chairman representing the project office, a representative of the contracting office, and representatives from other concerned offices as appropriate.

(b) *Functions and procedures of AID evaluation committees.* (1) The functions of an evaluation committee shall be:

(i) To evaluate all proposals pursuant to the evaluation criteria established and set forth in the solicitation document.

(ii) To prepare a written listing of all offerors together with the results of the evaluation of their proposals. Such a listing shall be sent by the Chairman to the contracting officer setting forth the results of the evaluation.

(iii) The contracting officer is responsible for reviewing the justification in support of the written evaluation results to determine that it is adequate and complete.

(2) The procedures for an evaluation committee shall be:

(i) The contracting officer will receive all proposals and provide a listing and copies to the Chairman.

(ii) The Chairman will promptly call a meeting of the committee to evaluate the proposals received. The evaluation will be based on the evaluation factors set forth in the solicitation document.

(iii) No member of the AID evaluation committee shall hold discussions with any offeror before or during the AID evaluation committee's proceedings.

§ 7-4.5608 Selection of offerors for negotiation and award.

See FPR 1-3.8.

Subpart 7-4.57—Educational Institution and International Research Center Selection Procedure

SOURCE: 41 FR 4919, Feb. 3, 1976, unless otherwise noted.

§ 7-4.5700 Scope of subpart.

This subpart prescribes policies and procedures for the selection of contractors to perform projects which have been determined to require the services of an educational institution or international research center (see §§ 7-4.5701 and 7-4.5702 of this subpart).

§ 7-4.5701 Definitions.

(a) An educational institution, as used in this subpart, is any non-profit corporation, foundation, trust, or state or local governmental entity operated primarily as an institution of higher learning offering a course of general studies leading to the granting of academic degrees. Consortia whose membership consists exclusively of educational institutions, as defined above are considered to be educational institutions.

(b) An international research center is an organization formally recognized

and listed as such by the Assistant Administrator, Bureau for Development Support.

[45 FR 74923, Nov. 13, 1980]

§ 7-4.5702 Applicability.

The provisions of this subpart are applicable when it has been determined by the project office, with the concurrence of the contracting officer, that the required skills or institutional relationships are available only from educational institutions or international research centers. This subpart is not applicable to contracts for research and development negotiated pursuant to Subpart 7-4.53 of this part, or to contracts for collaborative assistance (see Subpart 7-4.58 of this part), or for architect-engineer services (see Subpart 7-4.10 of this part).

§ 7-4.5704 Solicitation, evaluation, and selection procedures.

(a) A sufficient number of sources shall be solicited to insure that competition is obtained to the maximum practicable extent; this requirement shall be deemed satisfied when a contractor is selected pursuant to the procedures of this subpart.

(b) Following the concurrence of the contracting officer in the decision that a proposed project requires the services of an educational institution or international research center, the project office shall:

(1) Prepare selection criteria for evaluation of potential contractors for use in preparing the source list, determining predominantly qualified sources, and selecting the contractor;

(2) Prepare an initial source list of institutions considered qualified to perform the proposed project;

(3) Providing a statement providing a description of qualifications and areas of expertise considered essential, a statement of work, estimate of personnel requirements, special requirements (logistic support, government furnished property, and so forth) for the contracting officer's use in preparing the request for technical proposal;

(4) Send a memorandum incorporating paragraphs (b)(1) through (3) of this section, together with the "Action" copy of the PIO/T to the contracting officer, requesting him to prepare and distribute requests for technical proposal from the source list provided.

(c) Upon receipt and acceptance of the project officer's request, the contracting officer shall prepare requests for technical proposal (RFTP). The RFTP shall contain sufficient information to enable an offeror to submit a responsive and complete technical proposal; this includes a definitive statement of work, an estimate of the personnel required, and special provisions (such as logistic support, government furnished equipment, and so forth), a proposed contract format, and evaluation criteria. No cost or pricing data will be requested or required by the requests for technical proposal. The RFTP will be distributed to the sources recommended by the project office.

(d) Upon receipt of responses to the RFTP by the contracting officer, an evaluation committee will be established consisting of a representative of the project office as Chairman, the contracting officer or his designee, and any other members considered appropriate by the project office and contracting officer.

(e) The evaluation committee will evaluate all proposals in accordance with the criteria set forth in the RFTP, and will prepare a selection memorandum which shall:

(1) State the evaluation criteria;

(2) List all of the institutions whose proposals were reviewed;

(3) Report on the ranking and rational therefor for all proposals;

(4) Indicate the institution(s) considered best qualified.

(f) The evaluation committee will submit the selection memorandum to the head of the procuring activity for his review and approval.

(g) The head of the procuring activity will either approve the selection memorandum, or return it to the evaluation committee for reconsideration for specified reasons.

(h) If the selection memorandum is approved by the head of the procuring activity, it shall be forwarded to the contracting officer, and shall authorize him to commence negotiations.

(i) The contracting officer shall obtain cost, pricing, and other neces-

sary data from the selected institution(s) and shall conduct negotiations with said institution(s). If a satisfactory contract cannot be obtained, the head of the procuring activity will so advise the evaluation committee. The evaluation committee may then recommend alternate source(s).

Subpart 7-4.58—Collaborative Assistance Selection Procedure

SOURCE: 41 FR 4920, Feb. 3, 1976, unless otherwise noted.

§ 7-4.5800 Scope of subpart.

This subpart prescribes policies and procedures for the selection of contractors for collaborative assistance projects.

§ 7-4.5801 Definition.

(a) A collaborative assistance project is any project for which it has been determined (see § 7-4.5804 of this subpart) that:

(1) A continuing collaborative relationship between AID, the host country, and the contractor is required from project design through completion of the project. AID, host country, and contractor participation in a continuing review and evaluation of the project is essential for its proper execution; and

(2) The project requires the services of either an educational institution, international research center (as defined in AIDPR 7-4.5701), or cooperative development organization (which are organizations recognized and listed as such by the Assistant Administrator, Bureau for Private and Development Cooperation).

(b) It has been determined that the project requires the services of an educational institution or international research center as defined in AIDPR § 7-4.5701.

(c) The collaborative assistance method is fully defined and discussed in AIDPR Appendix H—Use of Collaborative Assistance Method for AID Direct Contracts for technical assistance.

[45 FR 44277, July 1, 1980, as amended at 45 FR 74923, Nov. 13, 1980]

§ 7-4.5802 Applicability.

The provisions of this subpart are applicable to all contracts implementing collaborative assistance projects (see § 7-4.5804 of this subpart).

§ 7-4.5804 Determination.

In order to prepare a contract pursuant to the collaborative assistance method, the determinations in § 7-4.5801 of this subpart must be made in accordance with the following procedures:

(a) The responsible project office makes a preliminary finding that a project should be classed as collaborative assistance in accordance with § 7-4.5801 (a)(1) and (2) of this subpart.

(b) Based upon this preliminary finding, the project office shall establish an evaluation panel consisting of a representative of the project office as Chairman; a representative of the Bureau for Development Support, for projects where the services of an educational institution or international research center are deemed necessary; a representative of the Bureau for Private and Development Cooperation for projects where the services of a cooperative development organization are deemed necessary; a representative of the Office of Contract Management; and any other representatives considered appropriate by the Chairman.

(c) The evaluation panel will review the proposed project; based on the panel's findings, the Chairman will make the formal, written determinations as to whether or not the project is collaborative assistance as required by § 7-4.5801 (a)(1) and (2) of this subpart.

[45 FR 44277, July 1, 1980]

§ 7-4.5805 Evaluation and selection.

(a) A sufficient number of sources must be considered to insure that competition is obtained to the maximum practicable extent; this requirement shall be deemed satisfied when a contractor is selected pursuant to the procedures of this subpart. Formal solicitation is not required.

(b) Following determination that a project is in fact collaborative assistance, the evaluation panel shall:

(1) Prepare evaluation and selection criteria;

(2) Prepare an initial source list including all potential sources known to have capabilities and expertise in the areas required by the proposed project; and

(3) Evaluate the list, using the evaluation criteria previously determined, for the purpose of making a written determination of the source (or sources) considered most capable of performing the project.

(c) The Chairman of the evaluation panel will prepare a memorandum to the contracting officer setting forth:

(1) The formal determination that the project is collaborative assistance,

(2) The evaluation criteria which have been determined, and

(3) The recommended source list and the rationale therefor, and requesting the contracting officer to prepare a request for expressions of interest from the qualified institution (or institutions).

(d) The contracting officer and the project officer will prepare a request for an expression (or expressions) of interest, containing sufficient information to permit an institution to determine its interest in the project, and to discuss the project with AID representatives, if appropriate. The request for expression of interest should include a concise statement of the purpose of the project, any special conditions or qualifications considered important, a brief description of the selection procedure and evaluation criteria which will be used, (if expressions of interest are being requested from more than one institution), the proposed contract format, and any other information considered appropriate. The request for expression of interest will be issued to the institution or institutions recommended by the panel. Guidelines for preparation of expressions of interest are contained in Atachment 1 to Appendix H of Handbook 14.

(e) The contracting officer will transmit all expressions of interest to the evaluation panel for evaluation and selection recommendation. The panel may conduct on site evaluations at its discretion, as part of the evaluation process.

(f) The Chairman of the evaluation panel will prepare a written selection recommendation with supporting justification, recommending that negotiations be conducted with the prospective contractor (s) selected by the evaluation panel. The selection recommendation shall be transmitted to the contracting officer together with the complete official file on the project which was being maintained by the evaluation panel.

(g) The contracting officer will review the selection recommendation, obtain necessary cost and other data, and proceed to negotiate with the recommended source.

[42 FR 27601, May 31, 1977, as amended at 45 FR 44277, July 1, 1980]

PART 7-5—SPECIAL AND DIRECTED SOURCES OF SUPPLY

Subpart 7-5.3—Excess Personal Property

Sec.
7-5.300 Scope of subpart.

Subpart 7-5.50—Foreign Economic Assistance Procurements by, through, and from Other Government Agencies

7-5.5000 Policy.
7-5.5001 Instructions.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

SOURCE: 30 FR 12975, Oct. 12, 1965, unless otherwise noted.

Subpart 7-5.3—Excess Personal Property

§ 7-5.300 Scope of subpart.

See also Handbook 16, Excess Property.

[41 FR 4921, Feb. 3, 1976]

Subpart 7-5.50—Foreign Economic Assistance Procurements by, through, and from Other Government Agencies

§ 7-5.5000 Policy.

The Foreign Assistance Act authorizes procurement by, through, or from other Government agencies, subject to a requirement for use, to the fullest practicable extent, of goods and engi-

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neering, and other services from private enterprise on a contract basis. The Foreign Assistance Act directs that in such fields as education, health, housing, and agriculture, the facilities and resources of other agencies are to be used when they are particularly or uniquely suitable for technical assistance, are not competitive with private enterprise, and can be made available without interfering unduly with domestic programs. With regard to the purchase of goods, or commodities, AID policy favors assumption of procurement responsibility by borrowers and grantees to the maximum practical extent, but when this is not practical, the preference is for procurement carried out through other Government agencies rather than AID itself.

§ 7-5.5001 Instructions.

General instructions and procedures are stated in AID Handbook 12, Use of Federal Agencies. Instructions on the procurement of specific types of commodities through specified agencies are set out in AID Handbook 15, AID-Financed Commodities.

[41 FR 4921, Feb. 3, 1976]

PART 7-6—FOREIGN PURCHASES

Subpart 7-6.1—Buy American Act—Supply and Service Contracts

Sec.
7-6.103 Exceptions.
7-6.103-51 Foreign Assistance Act functions.

Subpart 7-6.16—Purchases Under the Trade Agreement Act of 1979

7-6.1603 Applicability.

Subpart 7-6.51—Source, Origin, and Nationality

7-6.5100 General.
7-6.5101 Designation of authorized geographic code.
7-6.5102 Contractor employees.
7-6.5103 Contract clause—source and nationality requirements.
7-6.5104 Contract clause—authorization of local cost financing with U.S. dollars.
7-6.5105 Geographic source waivers.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

Subpart 7-6.1—Buy American Act—Supply and Service Contracts

§ 7-6.103 Exceptions.

§ 7-6.103-51 Foreign Assistance Act functions.

In addition to the exception stated in FPR 1-6.103-1 for purchases for use outside the United States, there is an exception for economic assistance functions performed under authority of the Foreign Assistance Act. This exception is stated in Executive Order 11223, dated May 12, 1965 (30 FR 6635). U.S. procurement restrictions are applied by AID, however, as shown elsewhere in this part. These restrictions are generally tighter than the Buy American Act. As a general rule, the tighter AID restrictions will be used. In the case of certain procurements for use within the United States, the Buy American provision may be used instead in the interest of uniformity among Federal Agencies procuring for domestic use.

[30 FR 12975, Oct. 12, 1965]

Subpart 7-6.16—Purchases Under the Trade Agreement Act of 1979

§ 7-6.1603 Applicability.

Subpart 1-6.16 of the Federal Procurement Regulations establishes procedures for purchases under the Trade Agreement Act of 1979. FPR 1-6.1603(e) lists 11 exemptions to the requirements of Subpart 1-6.16; FPR 1-6.1603(e)(10) exempts "Tied-aid procurements under AID foreign assistance programs . . .". Under this exemption, AID is not required to follow the procedures in Subpart 1-6.16 for any contract implementing a foreign assistance project. The procurement of goods or services for the direct benefit and use of AID, rather than for implementation of an assistance project, would be subject to the procedures in Subpart 1-6.16, unless otherwise exempted by one of the exceptions specified in FPR 1-6.1603(e).

[46 FR 31887, June 18, 1981]

Subpart 7-6.51—Source, Origin, and Nationality

AUTHORITY: Sec. 621, 75 Stat. 445, as amended, 22 U.S.C. 2381.

SOURCE: 45 FR 44283, July 1, 1980, unless otherwise noted.

§ 7-6.5100 General.

AID policies regarding source, origin, and nationality requirements for AID contractors and subcontractors are established in AID Handbook 1, Supplement B, primarily in Chapter 5. Additional related policies are set forth in Chapters 4, 7, and 18. These policies as they apply to subcontracts and purchases under AID-direct contracts have been incorporated into the contract clauses set forth in §§ 7-6.5103 and 7-6.5104 of this subpart.

§ 7-6.5101 Designation of authorized geographic code.

(a) The authorized geographic code or codes for an AID contract shall be specified in the Schedule of each contract and shown on its cover page. If no geographic code is specified, the authorized code will be deemed to be Geographic Code 000, the U.S.

(b) Individual country and geographic codes are defined in Attachment A-11, Section III, of Appendix D to AID Handbook 18.

§ 7-6.5102 Contractor employees.

There are no nationality restrictions on employees or consultants of either contractors or subcontractors providing services under an AID-financed contract, except that they must be citizens of a Geographic Code 935 country, or non-U.S. citizens lawfully admitted for permanent residence in the U.S.

[45 FR 44283, July 1, 1980; 45 FR 48888, July 22, 1980]

§ 7-6.5103 Contract clause—source and nationality requirements.

The following clause shall be included in all AID-direct contracts:

Source and Nationality Requirements for Procurement of Goods and Services (May 1982).

(a) *General.* Except as may be specifically approved or directed in advance by the contracting officer, or as provided in paragraph (h) of this section, all goods (e.g., equipment, vehicles, materials, and supplies), and services which will be financed under this contract with United States dollars shall be procured in and shipped from the U.S. (Code 000) and from any other countries within the authorized geographic code specified in the Schedule of this contract.

(b) *Procurement of goods.* In order to be eligible under this contract, goods purchased under this contract must be of eligible source and origin, and must satisfy AID's componentry requirements. In addition, the supplier of commodities must meet the nationality requirements specified in paragraph (d)(1) of this section.

(1) *Source.* Source means the country from which a commodity is shipped to the Cooperating Country or the Cooperating Country itself if the commodity is located therein at the time of purchase. However, where a commodity is shipped from a free port or bonded warehouse in the form in which received therein, source means the country from which the commodity was shipped to the free port or bonded warehouse.

(2) *Origin.* The origin of a commodity is the country or area in which a commodity is mined, grown, or produced. A commodity is produced when through manufacturing, processing, or substantial and major assembling of components, a commercially recognized new commodity results that is substantially different in basic characteristics, or in purpose or utility, from its components.

(3) *Componentry.* Components are the goods that go directly into the production of a produced commodity. AID componentry rules are as follows:

(i) If a commodity produced in an eligible source country contains no imported component, it is eligible for AID financing.

(ii) Unless otherwise specified by the contracting officer, components from the U.S., the Cooperating Country, and any other countries included in Geographic Code 941 may always be utilized in unlimited amounts regardless of the geographic code authorized.

(iii) Unless procurement is authorized from countries included in Code 899, components from free world countries not included in Code 941 are limited according to the following rules:

(A) They are limited only if they are acquired by the producer in the form in which they were imported.

(B) The total cost to the producer of such components (delivered at the point of production) may not exceed 50 percent of the lowest price (excluding the cost of ocean transportation and marine insurance) at which the supplier makes the commodity available for export sale (whether or not financed by AID).

(C) AID may prescribe percentages other than 50 percent for specific commodities.

(iv) Any component from a non-free world country makes the commodity ineligible for AID financing.

(4) *Supplier Nationality.* (See paragraph (d) of this section.)

(c) *Eligibility of commodity-related services.*

(1) *Incidental services.* Nationality rules are applied to the contractor or subcontractor supplying equipment under this contract and not separately to any subcontractor that may supply commodity-related incidental services. Such services, defined as the installation or erection of AID-financed equipment, or the training of personnel in the maintenance, operation, and use of such equipment, are eligible if specified in the equipment contract or subcontract and performed by citizens of countries included in AID Geographic Code 935, or non-U.S. citizens lawfully admitted for permanent residence in the U.S.

(2) *Ocean and air transportation.*

(i) Except as otherwise approved in writing by the contracting officer, AID will finance only those ocean transportation costs:

(A) Incurred on vessels under U.S. flag registry, when Geographic Code 000 is authorized for procurement of goods or services;

(B) Incurred on vessels under U.S., Cooperating Country, or other countries included in Geographic Code 941 flag registry, when Geographic Code 941 is authorized for procurement of goods or services; or

(C) Incurred on vessels under flag registry of any free world country, if the costs are part of the total cost on a through bill of lading paid to a carrier for initial carriage on a vessel which is authorized in accordance with paragraphs (c)(2)(i) (A) and (B), of this section.

(ii) Any ocean or air charter, covering full or part cargo, for the transportation of goods purchased under this contract must be approved by the AID Transportation Support Division, Office of Commodity Management, prior to shipment.

(iii) When use of non-U.S. flag vessels has been authorized, the following requirements still apply:

(A) At least 50 percent of the gross tonnage of all goods purchased under this contract and transported to the Cooperating Country on ocean vessels shall be transported on privately-owned U.S. flag commercial vessels, to the extent such vessels are available at fair and reasonable rates for such vessels; and

(B) At least 50 percent of the gross freight revenue generated by shipments of goods purchased under this contract and transported to the Cooperating Country on dry cargo liners shall be paid to or for the benefit of privately-owned U.S. flag commercial vessels to the extent such vessels are available at fair and reasonable rates for such vessels.

(iv) When U.S. flag vessels are not available, or their use would result in a significant delay, the contractor may request a certificate of nonavailability from the AID Transportation Support Division, Office of Commodity Management, giving the basis for the request. Such a determination of nonavailability will relieve the contractor of the requirement to use U.S. flag vessels for the tonnage of goods included in the determination.

(v) Vouchers submitted for reimbursement which include ocean shipment costs shall contain a certification essentially as follows: "I hereby certify that a copy of each ocean bill of lading concerned has been submitted to the Maritime Administration, Cargo Preference Control Center, Commerce Building, Washington, D.C. 20235 and that such bills of lading state all of

the carrier's charges including the basis for calculation such as weight or cubic measurement."

(vi) For use of U.S. flag air carriers, see the General Provision entitled "Preference for U.S. Flag Air Carriers."

(3) *Marine insurance.* The eligibility or marine insurance is determined by the country in which it is "placed." Insurance is "placed" in a country if payment of the insurance premium is made to, and the insurance policy is issued by, an insurance company located in that country. Eligible countries for placement are governed by the authorized geographic code, except that if Code 941 is authorized, the Cooperating Country is also eligible. Section 604(d) of the Foreign Assistance Act requires that if a recipient country discriminates by statute, decree, rule, or practice with respect to AID-financed procurement against any marine insurance company authorized to do business in any State of the United States, then any AID-financed commodity shipped to that country shall be insured against marine risk and the insurance shall be placed in the U.S. with a company or companies authorized to do a marine insurance business in any State of the U.S.)

(d) *Nationality.* Except as specified in paragraph (c) of this clause, in order to be eligible for AID financing under this contract suppliers or subcontractors must fit one of the following categories:

(1) *Suppliers of commodities.* A supplier providing goods under this contract must fit one of the following categories to be eligible for AID financing:

(i) An individual who is a citizen or, except as provided in paragraph (d)(7) of this clause, a legal resident of a country or area included in the authorized geographic code;

(ii) A corporation or partnership organized under the laws of a country or area included in the authorized geographic code;

(iii) A controlled foreign corporation, i.e., any foreign corporation of which more than 50 percent of the total combined voting power of all classes of stock is owned by United States shareholders within the meaning of Section 957 et seq. of the Internal Revenue Code, 26 U.S.C. 957; or

(iv) A joint venture or unincorporated association consisting entirely of individuals, corporations, or partnerships which are eligible under any of the foregoing categories.

(2) *Privately owned commercial suppliers of services.* An individual or a privately owned commercial firm is eligible for financing by AID under this contract as a subcontractor providing services only if the criteria in paragraphs (d)(2)(i), (ii), or (iii) of this clause are met and, in the case of the categories described in paragraphs (d)(2)(ii) and (iii) of this clause, the certification requirements in paragraph (d)(2)(iv) of this clause are met.

(i) The supplier is an individual who is a citizen of and whose principal place of business is in a country or area included in the authorized geographic code or a non-U.S. citizen lawfully admitted for permanent residence in the United States whose principal place of business is in the United States;

(ii) The supplier is a privately owned commercial (i.e., for profit) corporation or partnership that is incorporated or legally organized under the laws of a country or area included in the authorized geographic code, has its principal place of business in a country or area included in the authorized geographic code, and meets the criteria set forth in either paragraph (d)(2)(ii)(A) or (B) of this clause:

(A) The corporation or partnership is more than 50% beneficially owned by individuals who are citizens of a country or area included in the authorized geographic code. In the case of corporations, "more than 50% beneficially owned" means that more than 50% of each class of stock is owned by such individuals; in the case of partnerships, "more than 50% beneficially owned" means that more than 50% of each category of partnership interest (e.g., general, limited) is owned by such individuals. (With respect to stock or interest held by companies, funds or institutions, the ultimate beneficial ownership by individuals is controlling.)

(B) The corporation or partnership:

(*1*) Has been incorporated or legally organized in the United States for more than 3 years prior to the issuance date of the invitation for bids or request for proposals, and

(*2*) Has performed within the United States similar administrative and technical, professional, or construction services under a contract or contracts for services and derived revenue therefrom in each of the 3 years prior to the issuance date of the invitation for bids or request for proposals, and

(*3*) Employs United States citizens in more than half its permanent full-time positions in the United States, and

(*4*) Has the existing capability in the United States to perform the contract.

(iii) The supplier is a joint venture or unincorporated association consisting entirely of individuals, corporations, partnership, or nonprofit organizations which are eligible under paragraphs (d)(2)(i), (d)(2)(ii), or (d)(3) of this clause.

(iv) A duly authorized officer of a firm or nonprofit organization shall certify that the participating firm or non-profit organization meets either the requirements of paragraphs (d)(2)(ii) or (d)(3) of this clause. In the case of corporations, the certifying officer shall be the corporate secretary. With respect to the requirements of paragraph (d)(2)(ii)(A) of this clause, the certifying officer may presume citizenship on the basis of the stockholder's record address, provided the certifying officer certifies, regarding any stockholder (including any corporate fund or institutional stockholder) whose holdings are material to the corporation's eligibility, that the certifying officer knows of no fact which might rebut that presumption.

(3) *Nonprofit organizations.* Nonprofit organizations, such as educational institutions, foundations, and associations, are eligible for financing by AID under this contract as subcontractors for services if they meet all of the criteria listed in paragraphs (d)(3)(i), (ii), and (iii) of this clause, and the certification requirement in paragraph (d)(2)(iv) of this clause is met. (International agricultural research centers and such other international research centers as may be, from time to time, formally listed as such by the Senior Assistant Administrator, Bureau for Science and Technology, are considered to be of U.S. nationality.) Any such organizations must:

(i) Be organized under the laws of a country or area included in the authorized geographic code; and

(ii) Be controlled and managed by a governing body, a majority of whose members are citizens of countries or areas included in the authorized geographic code; and

(iii) Have its principal facilities and offices in a country or area included in the authorized geographic code.

(4) *Government-owned organizations.* Firms operated as commercial companies or other organizations (including nonprofit organizations other than public educational institutions) which are wholly or partially owned by governments or agencies thereof are not eligible for financing by AID as subcontractors.

(5) *Joint ventures.* A joint venture or unincorporated association is eligible only if each of its members is eligible in accordance with paragraphs (d)(2), (3), or (4) of this clause.

(6) *Construction services from local firms.* When the host country is an authorized source for services, and the estimated cost of the construction services is $5 million or less, a corporation or partnership which is determined by AID to be an integral part of the local economy is eligible. A corporation or partnership is an integral part of the local economy provided:

(i) It has done business in the host country on a continuing basis for not less than three years prior to the issuance date of invitations for bids or requests for proposals;

(ii) It has a demonstrated capability to undertake the proposed activity;

(iii) All, or substantially all, of its directors of local operations, senior staff and operating personnel are resident in the host country;

(iv) Most of its operating equipment and physical plant are in the host country.

(7) *Ineligible suppliers.* Citizens of any country or area, and firms and organizations located in or organized under the laws of any country or area,

which is not included in Geographic Code 935 are ineligible for financing by AID as suppliers of services or as agents acting in connection with the supply of services, except that non-U.S. citizens lawfully admitted for permanent residence in the United States are eligible regardless of such citizenship.

(8) *Special restrictions on procurement of construction or engineering services.* Section 604(g) of the Foreign Assistance Act provides that AID funds may not be used for "procurement of construction or engineering services from advanced developing countries, eligible under the Geographic Code 941, which have attained a competitive capability in international markets for construction services or engineering services." In order to insure eligibility of a Code 941 subcontractor for construction or engineering services, obtain the AID contracting officer's approval for any such subcontract.

(e) *Nationality of employees under contracts and subcontracts for services.* The nationality policy of paragraph (d)(2) of this section does not apply to the employees of contractors or subcontractors, but all contractor and subcontractor employees engaged in providing services under AID-financed contracts must be citizens of countries included in AID Geographic Code 935 or non-U.S. citizens lawfully admitted for permanent residence in the United States.

(f) *The Cooperating Country as a source.* With certain exceptions, the Cooperating Country is not normally an eligible source for procurement to be paid in U.S. dollars. The exceptions are for ocean freight and marine insurance (see paragraphs (c)(1) and (c)(2) of this section.) The Cooperating Country may be an eligible source if local cost financing is approved either by specific action of the contracting officer, or in the Schedule of the contract. In such cases, the General Provision entitled "Local Cost Financing With U.S. Dollars", as required by AIDPR 7-6.5104, will apply.

(g) *Ineligible goods and services.* The following goods or services shall not be procured under this contract:

(1) Miltary equipment;

(2) Surveillance equipment;

(3) Commodities and services for support of police or other law enforcement activities;

(4) Abortion equipment and services;

(5) Luxury goods and gambling equipment; or

(6) Weather modification equipment.

If AID determines that the Contractor has procured any of these specific ineligible goods and services under this contract and has received payment therefor, the Contractor agrees to refund to AID the entire amount of the purchase.

(h) *Restricted goods.* The Contractor shall not procure any of the following goods or services without the prior written approval of the contracting officer:

(1) Agricultural commodities;

(2) Motor vehicles;

(3) Pharmaceuticals;

(4) Pesticides;

(5) Plasticizers;

(6) Used equipment;

(7) U.S. Government-owned excess property; or

(8) Fertilizer.

If AID determines that the Contractor has procured any of these specified restricted goods under this contract without the prior written authorization of the contracting officer, and has received payment for such purposes, the Contractor agrees to refund to AID the entire amount of the purchase.

(i) *Printed or audio-visual teaching materials.* If the effective use of printed or audio-visual teaching materials depends upon their being in the local language and if such materials are intended for technical assistance projects or activities financed by AID in whole or in part and if other funds, including U.S.-owned or U.S.-controlled local currencies are not readily available to finance the procurement of such materials, local language versions may be procured from the following sources, in order of preference:

(1) Code 000, United States;

(2) Code —, Cooperating Country;

(3) Code 941, Selected Free World;

(4) Code 899, Free World.

(j) *Ineligible suppliers.* Funds provided under this contract shall not be used to procure any commodity or commodity-related services furnished by any supplier whose name appears on the List of Ineligible Suppliers under AID Regulation 8, "Suppliers of Commodities and Commodity-Related Services Ineligible for AID Financing" (22 CFR 208). The Contractor agrees to review said list prior to undertaking any procurement the cost of which is to be financed under this contract. The contracting officer will provide the Contractor with this list.

[45 FR 44283, July 1, 1980, as amended at 46 FR 31888, June 18, 1981; 47 FR 25964, June 16, 1982]

§ 7-6.5104 Contract clause-authorization of local cost financing with U.S. dollars.

(a) Local cost financing requires specific authorization under paragraph 18A1c of Chapter 18, AID Handbook 1, Supplement B. Such authorization must specify the U.S. Dollar amount which may be used for local cost financing.

(b) When local cost financing has been authorized, the contracting officer shall insert the following clause in the contract and set out the local cost portion in the Schedule of the contract:

LOCAL COST FINANCING WITH U.S. DOLLARS
(MAY 1981)

(a) Local cost financing is the use of U.S. dollars to obtain local currency for the procurement of goods and services in the Cooperating Country in furtherance of the purpose of the contract. Local cost financing must be specifically authorized in the Schedule of the contract. The amount of U.S. dollars which may be used must be specified in the authorization, together with any special restrictions on their use.

(b) Procurement of goods and services under local cost financing is subject to the following restrictions:

(1) *Ineligible goods and services.* The following goods or services shall not be procured under this contract:

(i) Military equipment;

(ii) Surveillance equipment;

(iii) Commodities and services for support of police or other law enforcement activities;

(iv) Abortion equipment and services;

(v) Luxury goods and gambling equipment; or

(vi) Weather modification equipment.

If AID determines that the Contractor has procured any of these specified ineligible goods and services under this contract, and has received payment therefore, the Contractor agrees to refund the entire amount of the purchase.

(2) *Restricted goods.* The Contractor shall not procure any of the following goods or services without the prior written approval of the contracting officer:

(i) Agricultural commodities;

(ii) Motor vehicles;

(iii) Pharmaceuticals;

(iv) Pesticides;

(v) Plasticizers;

(vi) Used equipment;

(vii) U.S. Government-owned excess property; or

(viii) Fertilizer.

If AID determines that the Contractor has procured any of these specified restricted goods under this contract, without the prior written authorization of the contracting officer, and has received payment for such purposes, the Contractor agrees to refund to AID the entire amount of the purchase.

(3) Any component from a non-free world country makes the commodity ineligible for AID financing.

(4) *Nationality requirements.* (i) Citizens or firms of any country not included in AID Geographic Code 935 are ineligible as suppliers, contractors, subcontractors, or agents in connection with AID-financed contracts for goods or services

(ii) Local cost financing is the use of appropriated U.S. dollars to obtain local currency for the payment for goods and services purchased *in the Cooperating Country.* Authorization of local cost financing makes the Cooperating Country, in addition to the United States and any other country included in the authorized geographic code for the project, an eligible source for the purchase of goods or services in the Cooperating Country. Goods or services purchased under local cost financing must be located in the Cooperating Country at the time they are purchased; they cannot be imported specifically for the project being implemented by this contract. The supplier from which goods or services are purchased under local cost financing must also be in the Cooperating Country. Suppliers of goods or services under local cost financing must meet the nationality eligibility tests prescribed in paragraph (d) of the clause of this contract entitled "Source and Nationality Requirements for Procurement of Goods and Services" (AIDPR 7-6.5103). When local cost financing has been authorized, the Cooperating Country is deemed to be included in the "authorized geographic code" for purposes of determining nationality eligibility pursu-

ant to paragraph (d) of the clause entitled "Source and Nationality Requirements for the Procurement of Goods and Services."

(c) *General principles.* Under local cost financing, the Contractor shall follow sound procurement policies, utilizing competition to the maximum practical extent, obtaining the lowest available price, and documenting such procurements to justify the method used and the price established.

(d) *Procurement of goods.* In order to be eligible under local cost financing, goods are subject to the following specific requirements:

(1) *Indigenous goods.* Goods which have been mined, grown, or produced in the Cooperating Country through manufacture, processing, or assembly are eligible for local cost financing under this contract. Goods produced with imported components must result in a commercially recognized new commodity that is substantially different in basic characteristics or in purpose or utility from its components in order to qualify as indigenous; such goods may not contain components from any non-free world country.

(2) *Imported shelf items.* Imported shelf items are goods that are normally imported and kept in stock, in the form in which imported, for sale to meet a general demand in the country for the item; they are not goods which have been specifically imported for use in an AID-financed project.

(i) Shelf items are eligible for local cost financing in unlimited quantities up to the total amount available for local cost financing if they have their source in the Cooperating Country, and their origin in a country included in AID Geographic Code 941.

(ii) Shelf items having their origin in any country included in Code 899 but not in Code 941 are eligible if the price of one unit does not exceed $5,000. For goods sold by units of quantity; e.g., tons, barrels, etc., the unit to which the local currency equivalent of $5,000 is applied is that which is customarily used in quoting prices. The total amount of imported shelf item purchases from countries included in Code 899 but not in Code 941 may not exceed $25,000 or 10% of the total local costs financed by AID for the project whichever is higher; however, *in no case* may the total amount of such purchases exceed $250,000 without first obtaining a specific geographic source waiver.

(3) *Goods imported specifically for the project.* Goods imported specifically for the project being implemented by this contract are not eligible for local cost financing; they are subject to the clause of this contract entitled "Source and Nationality Requirements for Procurement of Goods and Services" (AIDPR 7-6.5103).

[45 FR 44283, July 1, 1980, as amended at 45 FR 74923, Nov. 13, 1980; 46 FR 31888, June 18, 1981; 47 FR 25965, June 16, 1982]

§ 7-6.5105 Geographic source waivers.

(a) Authority to waive source, origin, nationality, and transportation services requirements is set forth in Delegation of Authority No. 40 (AID Handbook 5). Additional guidance is available in Chapters 5, 7, and 18 of Supplement B to AID Handbook 1.

(b) The contracting officer shall insert the authorized geographic code based on an approved geographic source waiver in the Schedule of the contract as provided for in § 7-7.5101 of this subpart. In addition, the contracting officer shall place a copy of any approved geographic source waiver in the official contract file.

PART 7-7—CONTRACT CLAUSES

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7-7.5001-22 Insurance—liability to third persons.
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7-7.5001-24 Excusable delays.
7-7.5001-25 Stop work order.
7-7.5001-26 Disputes.
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7-7.5001-32 Equal opportunity.
7-7.5001-33 Convict labor.
7-7.5001-34 Walsh-Healey Public Contracts Act.
7-7.5001-35 Officials not to benefit.
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7-7.5001-43 Employment of the handicapped.
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7-7.5002 Additional clauses.
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7-7.5002-9 Orientation and language training.
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7-7.5002-11 Services provided to contractor.
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7-7.5002-13 Contractor-mission relationships.
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7-7.5003-6 Mandatory use of visa eligibility Form DSP 66A by participants.
7-7.5003-7 Local cost financing with U.S. dollars.
7-7.5003-8 Protection of the individual as a research subject.
7-7.5003-9 Health and accident coverage for AID participant trainees.
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Subpart 7-7.53—Contracts for Participant Training

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7-7.5301-10 Inspection.
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7-7.5301-13 Termination.
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7-7.5302 Clauses to be used when applicable.
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Subpart 7-7.54—Clauses for Fixed Price Contracts for Technical Services

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7-7.5401-31 Disabled veterans and veterans of the Vietnam era.
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7-7.5401-33 Pricing of adjustments.
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7-7.5403 Clauses to be used when applicable.
7-7.5403-1 Alterations in contract.
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7-7.5403-6 Privacy Act.
7-7.5403-7 Mandatory use of visa eligibility Form DSP 66A by participants.

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7-7.5403-8 Protection of the individual as a research subject.
7-7.5403-9 Local cost financing with U.S. dollars.
7-7.5403-10 Health and accident coverage for AID participant trainees.
7-7.5403-11 Women-owned business concerns subcontracting programs.
7-7.5403-12 Participant training.

Subpart 7-7.55—Clauses for Cost Reimbursement Contracts With Educational Institutions

7-7.5500 Scope of subpart.
7-7.5501-1 Definitions.
7-7.5501-2 Approvals.
7-7.5501-3 Biographical data.
7-7.5501-4 [Reserved]
7-7.5501-5 Personnel compensation.
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7-7.5501-7 Travel expenses.
7-7.5501-8 Allowable cost and payment.
7-7.5501-9 Negotiated overhead rates—postdetermined.
7-7.5501-10 Limitation of cost or funds.
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7-7.5501-14 Research activities and the use of graduate students.
7-7.5501-15 Training of foreign country nationals.
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7-7.5501-21 Termination for convenience of the government.
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7-7.5501-24 Notice and assistance regarding patent and copyright infringement.
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7-7.5501-26 Assignment of claims.
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7-7.5501-29 Utilization of small business and small disadvantaged business concerns.
7-7.5501-30 Utilization of labor surplus area concerns.
7-7.5501-31 Convict labor.
7-7.5501-32 Officials not to benefit.
7-7.5501-33 Convenant against contingent fees.
7-7.5501-34 Language, weights and measures.
7-7.5501-35 Small business and small disadvantaged business subcontracting plan/incentive subcontracting program.
7-7.5501-36 Disabled veterans and veterans of the Vietnam era.
7-7.5501-37 [Reserved]
7-7.5501-38 Notices.
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7-7.5501-41 Health and accident coverage for AID participant trainees.
7-7.5501-42 Use of government facilities and personnel.
7-7.5501-43 Utilization of women-owned business concerns.
7-7.5502 Additional clauses.
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7-7.5502-5 Orientation and language training.
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7-7.5502-8 Differential and allowances.
7-7.5502-9 Travel expenses.
7-7.5502-10 Transportation and storage expenses.
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7-7.5502-12 Notice of changes in regulations.
7-7.5502-13 Use of pouch facilities.
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7-7.5502-15 Facilities and services to be arranged by AID.
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7-7.5502-18 Insurance—workmen's compensation, private automobile, marine and air cargo (Overseas).
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7-7.5503 Clauses to be used when applicable.
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7-7.5503-2 Advance of funds.
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7-7.5503-4 Negotiated overhead rates—predetermined.
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7-7.5503-6 Changes.
7-7.5503-7 Security requirements.
7-7.5503-8 Patent rights.
7-7.5503-9 Care of laboratory animals.
7-7.5503-10 Family planning and population assistance activities.
7-7.5503-11 Privacy Act.
7-7.5503-12 Local cost financing with U.S. dollars.

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7-7.5503-13 Protection of the individual as a reseach subject.
7-7.5503-14 Women-owned business concerns subcontracting program.

AUTHORITY: Sec. 621, 72 Stat. 445, as amended (22 U.S.C. 2381); E.O. 10973, Nov. 3, 1961, 26 FR 10469; 3 CFR 1959-63 Comp.

§ 7-7.000 Scope of part.

This part sets forth uniform contract clauses for use in connection with AID's procurement of personal property and nonpersonal services.

[35 FR 11393, July 16, 1970]

§ 7-7.001 References to "Government".

Whenever it is appropriate, in order to avoid ambiguity or misinterpretation, the words "United States" may be inserted before the word "Government" in a standard clause. Similar clarification may be appropriate for other words which appear in standard clauses, including those which refer to officers of the United States Government.

[30 FR 12978, Oct. 12, 1965]

Subpart 7-7.1—Fixed-Price Supply Contracts

SOURCE: 30 FR 12978, Oct. 12, 1965, unless otherwise noted. Redesignations at 38 FR 28672, Oct. 16, 1973.

§ 7-7.102 Required clauses.

§ 7-7.102-1 Definitions.

DEFINITIONS

As used throughout this contract, the following terms shall have the meanings set forth below:

(a) The term "head of the agency", "Secretary", or "Administrator", as used herein means the Administrator, Deputy Administrator, or Assistant Administrator for Program and Management Services of the Agency for International Development; and the term "his duly authorized representative" means any person or persons or board (other than the contracting officer) authorized to act for the head of the agency.

(b) The term "Contracting Officer" means the person executing this contract on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(c) Except as otherwise provided in this contract, the term "subcontracts" includes purchase orders under this contract.

[30 FR 12978, Oct. 12, 1965, as amended at 38 FR 12807, May 16, 1973. Redesignated and amended at 38 FR 28672, Oct. 16, 1973]

§ 7-7.102-10 Federal, State, and local taxes.

Whenever the FPR clauses are used and it is appropriate, the contract shall contain a provision explaining that the taxes referred to are United States Federal, State, and local taxes.

§ 7-7.102-14 Buy American Act.

The clause set forth in FPR 1-7.102-14 is not generally included in AID contracts when more stringent source requirements are stated in the contract or when inclusion is not appropriate under FPR 1-6.104-5. (See Executive Order No. 11223, dated May 12, 1965, 30 FR 6635.) Clauses setting forth the AID source restrictions are included in AIDPR 7-6.5103.

[38 FR 28672, Oct. 16, 1973, as amended at 45 FR 44277, July 1, 1980]

§ 7-7.102-17 Officials not to benefit.

If the procurement is made by an overseas field procurement activity or in other cases where appropriate, the following clause may be substituted for the provision in FPR 1-7.102-17.

UNITED STATES OFFICIALS NOT TO BENEFIT

No member of or delegate to the Congress of the United States of America, or resident commissioner of the United States of America shall be admitted to any share or part of this contract, or to any benefit that might arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

[30 FR 12978, Oct. 12, 1965. Redesignated and amended at 38 FR 28672, Oct. 16, 1973]

§ 7-7.103 Clauses to be used when applicable.

[38 FR 28672, Oct. 16, 1973]

§ 7-7.103-22 Workmen's compensation insurance (Defense Base Act).

As a general rule, waivers will be obtained for persons employed outside

the United States who are not United States citizens or residents, provided adequate protection will be given such persons. See AIDPR 7-10.402.

§ 7-7.103-50 Mandatory use of visa eligibility Form DSP 66A by participants.

If foreign students are to be brought to the United States for training, insert the clause set forth in AIDPR 7-7.5301-5.

[42 FR 28540, June 3, 1977. Redesignated at 45 FR 44277, July 1, 1980, and amended at 47 FR 25965, June 16, 1982]

Subpart 7-7.6—Fixed-Price Construction Contracts

§ 7-7.602 Additional standardized clauses.

[30 FR 12978, Oct. 12, 1965]

§ 7-7.602-27 Federal, State, and local taxes.

See AIDPR 7-7.102-10.

[39 FR 21129, June 19, 1974. Redesignated at 45 FR 44277, July 1, 1980]

§ 7-7.603-9 Workmen's compensation insurance (Defense Base Act).

See AIDPR 7-7.103-22.

[39 FR 21129, June 19, 1974. Redesignated at 45 FR 44277, July 1, 1980]

§ 7-7.603-50 Mandatory use of visa eligibility Form DSP 66A by participants.

If foreign students are to be brought to the United States for training, insert the clause set forth in AIDPR 7-7.5301-5.

[42 FR 28540, June 3, 1977. Redesignated at 45 FR 44277, July 1, 1980, and amended at 47 FR 25965, June 16, 1982]

Subpart 7-7.50—Clauses for Cost Reimbursement Contracts

SOURCE: 37 FR 3804, Feb. 23, 1972, unless otherwise noted.

§ 7-7.5000 Scope of subpart.

This subpart sets forth contract clauses for use in cost reimbursement contracts with commercial organizations, or with nonprofit organizations. Contract clauses for use with educational institutions are set forth in Subpart 7-7.55.

[46 FR 31888, June 18, 1981]

§ 7-7.5001 Required clauses.

The following clauses are mandatory for cost reimbursement contracts with commercial organizations. For cost reimbursement contracts with nonprofit organizations, delete all reference to "Subpart 1-15.2 (Contracts with Commercial Organizations) of the Federal Procurement Regulations"; in its place insert reference to "Subpart 1-15.6 (Contracts with Nonprofit Organizations) of the Federal Procurement Regulations."

[46 FR 31888, June 18, 1981]

§ 7-7.5001-1 Definitions.

DEFINITIONS (DECEMBER 1970)

(a) "Administrator" shall mean the Administrator or the Deputy Administrator of the Agency for International Development.

(b) "AID" shall mean the Agency for International Development.

(c) "Consultant" shall mean any especially well qualified person who is engaged, on a temporary or intermittent basis to advise the Contractor and who is not an officer or employee of the Contractor who performs other duties for the Contractor.

(d) "Contracting officer" shall mean the person executing this contract on behalf of the United States Government, and any other government employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(e) "Contractor employee" shall mean an employee of the Contractor assigned to work under this contract.

(f) "Cooperating country or countries" shall mean the foreign country or countries in or for which services are to be rendered hereunder.

(g) "Cooperating Government" shall mean the government of the Cooperating Country.

(h) "Economy class" air travel (also known as jet economy, air coach, tourist-class, etc.) shall mean a class of air travel which is less than first class.

(i) "Federal Procurement Regulations" (FPR), when referred to herein shall include Agency for International Development Procurement Regulations (AIDPR).

(j) "Government" shall mean the United States Government.

(k) "Mission" shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(l) "Mission Director" shall mean the principal officer in the Mission in the Cooperating Country, or his designated representative.

§ 7-7.5001-2 Changes.

Insert the clause set forth in FPR 1-7.404-5, and the following additional paragraph (d):

(d) If this contract is executed by an AID/Washington Contracting Officer, valid change orders may be issued only by the AID/Washington Contracting Officer, or such person as he or she may designate in writing for such purpose.

[45 FR 55725, Aug. 21, 1980]

§ 7-7.5001-3 Biographical data.

BIOGRAPHICAL DATA (DECEMBER 1970)

(a) Contractor agrees to furnish to the Contracting Officer, on forms provided for that purpose, biographical information on the following individuals to be employed in the performance of the contract: (1) All individuals to be sent outside of the United States, (2) key personnel. Biographical data on the other individuals employed under the contract shall be available for review by AID at the Contractor's principal place of business.

§ 7-7.5001-4 Leave and holidays.

LEAVE AND HOLIDAYS (DECEMBER 1970)

Contractor employees shall be entitled to such leave and holidays while serving in the United States as are provided in accordance with the Contractor's established policy and practice, but in no event shall vacation leave be earned at a rate exceeding 26 working days per annum, or sick leave be earned at a rate exceeding 13 working days per annum.

§ 7-7.5001-5 Travel and transportation expenses.

TRAVEL AND TRANSPORTATION EXPENSES (MAY 1982)

(a) *United States travel.* The Contractor shall be reimbursed for actual transportation costs and travel allowances of travelers in accordance with the established practice of the Contractor for travel within the United States directly referable to the contract and not continuous with travel to and from the Cooperating Country. Such transportation costs shall not be reimbursed in an amount greater than the cost of, and time required for economy class commercial scheduled air travel by the most expeditious route unless economy air travel or economy air travel space are not available and the Contractor certifies to the facts in the voucher or other documents retained as part of his contract records to support his claim for post-audit. Such travel allowances shall be in accordance with the established practice of the Contractor for travel within the United States provided that it shall not exceed the rates and basis for computation of such rates as provided in the Federal Travel Regulations, as from time to time amended.

(b) *Actual expense basis.* Travel on an actual expense basis may be authorized or approved by the Contractor's Chief Executive Officer, or equivalent official, when it is determined that unusual circumstances of the assignment will require expenditures greatly in excess of the maximum per diem allowance provided herein. Payment on an actual expense basis is limited to specific travel assignments and should be used only in exceptional cases and not merely to cover a small amount of costs in excess of per diem. Normally the authorization will be limited to cases where the cost of lodging (exclusive of meals) at available hotels absorbs practically all of the per diem allowance. In no event, however, shall the amount authorized exceed the applicable maximum amount allowable under section 7.2 of the Federal Travel Regulations, as from time to time amended. Receipts covering all expenses claimed hereunder shall be filed by the traveler with his voucher and shall be retained as a part of the Contractor's records to support the Contractor's claim for reimbursement, or for post audit.

[37 FR 3804, Feb. 23, 1972, as amended at 38 FR 28672, Oct. 16, 1973; 47 FR 25965, June 16, 1982]

§ 7-7.5001-6 Standards of work.

Insert the clause set forth in FPR 1-7.302-3.

[45 FR 55725, Aug. 21, 1980]

§ 7-7.5001-7 Inspection.

Insert the clause set forth in FPR 1-7.402-5(c).

[45 FR 44278, July 1, 1980]

§ 7-7.5001-8 Limitation of cost or funds.

(a) For *fully funded* contracts *not* providing for cost-sharing, insert the Limitation of Cost clause set forth in FPR 1-7.202-3(a), in accordance with FPR 1-7.402-2(a).

(b) For *fully funded* contracts which *do* provided for cost-sharing, insert the

Limitation of Cost (Cost-Sharing) clause set forth in FPR 1-7.402-2(b).

(c) For *incrementally funded* contracts *not* providing for cost-sharing, insert the Limitation of Funds clause set forth in FPR 1-7.202-3(b), in accordance with FPR 1-7.402-2(c). (If the contract does *not* provide for payment of a fee, delete paragraph (g) of the clause specified in FPR 1-7.202-3(b)).

(d) For *incrementally funded* contracts which *do* provide for cost-sharing, insert the Limitation of Funds (Cost-Sharing) clause set forth in FPR 1-7.402-2(d).

[45 FR 55725, Aug. 21, 1980]

§ 7-7.5001-9 Allowable cost, fixed fee, and payment.

ALLOWABLE COST, FIXED FEE, AND PAYMENT

(MARCH 1979)

(a) For the performance of this contract, the Government shall pay to the Contractor:

(1) The cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(i) Subpart 1-15.2 (Contracts with Commercial Organizations) of the Federal Procurement Regulations as in effect on the date of this contract; and

(ii) The terms of this contract; and

(2) Such fixed fee, if any, as may be provided for in the Schedule.

(b) Dollar payment:

(1) Once each month (or at more frequent intervals, if approved by the paying office indicated on the Cover Page), the Contractor may submit to such office Voucher Form SF-1034 (original) and SF-1034(a) three copies, each voucher identified by the appropriate AID contract number, properly executed, in the amount of the dollar expenditures made during the period covered, which voucher forms shall be supported by:

(i) Original and three copies of a certified fiscal report rendered by the contractor in a form and manner satisfactory to AID substantially as follows:

TOTAL EXPENDITURES

Category	Budget amount	To date	This period (indicate dates)
Salaries and wages:			
Home office	$XXX	$XXX	$XXX
Field office	XXX	XXX	XXX

TOTAL EXPENDITURES—Continued

Category	Budget amount	To date	This period (indicate dates)
Indirect costs:			
Home office	XXX	XXX	XXX
Field office	XXX	XXX	XXX
Consultant fees	XXX	XXX	XXX
Allowances	XXX	XXX	XXX
Travel and transportation	XXX	XXX	XXX
Expendable equipment and materials	XXX	XXX	XXX
Non-expendable property	XXX	XXX	XXX
Participant costs	XXX	XXX	XXX
Other direct costs	XXX	XXX	XXX
Grand total	$XXX	$XXX	$XXX

(ii) The fiscal report shall include a certification signed by an authorized representative of the Contractor as follows:

The undersigned hereby certifies: (A) That payment of the sum claimed under the cited contract is proper and due and that appropriate refund to AID will be made promptly upon request in the event of disallowance of costs not reimbursable under the terms of the contract, (B) that information on the fiscal report is correct and such detailed supporting information as AID may reasonably require will be furnished promptly to AID on request at the Contractor's home office or base office as appropriate, and (C) that all requirements called for by the contract to date of this certification have been met.

By ————————————————

Title ————————————————

Date ————————————————

(iii) In certain cases, the Contracting Officer may require the Contractor to submit, in lieu of the certified fiscal report required in paragraph (b)(1)(i) of this section, detailed documentation in support of Contractor requests for reimbursement. However, such detailed documentation shall be submitted in support of Contractor requests for reimbursement under all contracts in which the total contract amount is $50,000 or less, and may be required by the Contracting Officer under contracts in which the total contract amount is in excess of $50,000. *Provided, however,* That if the Contractor has a contract in excess of $50,000 for which a fiscal report is required, then all contracts which he may have shall be supported in the same manner. The detailed documentation shall include the following:

(A) Copy of Contractor's payroll indicating names, pay rates, and pay periods with regard to salaries, fees, and any related al-

lowances paid Contractor's employees and consultants.

(B) Statement of itinerary and originals or copies of carriers' receipts for employees' and dependents' transportation costs. Travel allowances must be stated separately.

(C) Receipted supplier's invoices for cost of commodities, equipment and supplies, insurance, and other items. Invoices must show quantity, description, and price (less applicable discounts and purchasing agent's commission). Individual transactions under $100.00 may be supported by an itemized listing containing the numbers of the Contractor's checks used to make payment. Delivery of supplies and equipment to appropriate destination must be supported by copy or photostat of bill of lading, airways bill or parcel post receipt. Voucher SF-1034 or SF-1036, as appropriate, must state whether or not items procured by Contractor were procured through advertising.

(D) Receipted invoice of transporter showing name of vessel, flag and transportation charge for transportation of supplies or equipment, plus copy or photostat of ocean or charter party bill of lading or airways bill if applicable. No invoice is required if the bill of lading contains all the required information.

(iv) Unless otherwise provided in the contract, the contractor shall submit a vendor's invoice detailing the quantity, description and price for each individual item purchased, as follows:

(A) Expendable equipment, supplies, or commodities—for transactions totalling more than $2,500.

(B) Non-expendable property—for every purchase. Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500. This definition applies only to personal property purchased by the contractor or delivered directly to the contractor from the vendor. Personal property issued to the contractor in the host country by the mission accountable officer and listed as non-expendable is reportable to the mission accountable officer regardless of its value.

(2) Promptly after receipt of each voucher and statement of dollar cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of (d) of this section, make payment thereon as approved by the paying office indicated on the Cover Page. Payment of the fixed fee, if any, shall be made to the Contractor as specified in the Schedule; provided, however, that after payment of eighty-five percent (85%) of the fixed fee set forth in the Schedule, further payment on account of the fixed fee shall be withheld until a reserve of either fifteen percent (15%) of the total fixed fee, or one hundred thousand dollars ($100,000), whichever is less, shall have been set aside.

(3) On receipt and approval of the voucher designated by the Contractor as the "final voucher" (which is to be submitted on Form SF-1034 (original) and SF-1034(a) in three copies and supported by:

(i) Original and three copies of a certified fiscal report rendered by the Contractor as in paragraphs (b)(1) (i) and (ii) of this section;

(ii) Vendor's invoices as in paragraphs (b)(1) (iii) and (iv) of this section; and

(iii) Refund check for the balance of funds if any remaining on hand and not obligated by the Contractor), and upon compliance by the Contractor with all the provisions of this contract, the Government shall promptly pay to the Contractor any part of the fixed fee which has been withheld pursuant to paragraph (b)(2) of this section or otherwise not paid to the Contractor. The final voucher shall be submitted by the Contractor promptly following completion of the work under this contract but in no event later than one hundred and twenty (120) days (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion.

(c) *Local currency payment.* The Contractor is fully responsible for the proper expenditure and control of local currency, if any, provided under this contract. Local currency will be provided to the Contractor in accordance with written instructions provided by the Mission Director. The written instructions will also include accounting, vouchering, and reporting procedures. A copy of the instructions shall be provided to the Contractor's Chief of Party and to the Contracting Officer. The costs of bonding personnel responsible for local currency are reimbursable under the contract.

(d) Until the expiration of three years after final dollar or local currency payment under this contract, the Contracting Officer may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by the Contracting Officer on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding vouchers.

NOTE: When the clause entitled "Audit" (FPR 1-3.814-2(a)) is included in this contract, this paragraph is self-deleting.

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(e) The Contractor agrees that all approvals of the Mission Director and the Contracting Officer which are required by the provisions of this contract shall be preserved and made available as part of the Contractor's records which are required to be preserved and made available by the clauses of this contract entitled "Examination of Records by Comptroller General" and "Audit".

(f) The Contractor agrees that any dollar or local currency refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver an assignment and release using AID Forms 1420-40 or 1420-44, as appropriate, as required in AIDPR 7-16.851.

(g) Any dollar or local currency cost incurred by the Contractor under the terms of this contract which would constitute allowable cost under the provisions of this clause shall be included in determining the amount payable under this contract, notwithstanding any provisions contained in the specifications or other documents incorporated in this contract by reference, designating services to be performed or materials to be furnished by the Contractor at his expense or without cost to the Government.

[41 FR 4921, Feb. 3, 1976, as amended at 44 FR 39162, July 5, 1979]

§ 7-7.5001-10 Negotiated overhead rates.

NEGOTIATED OVERHEAD RATES (MAY 1981)

(a) Notwithstanding the provisions of the clause of this Contract entitled "Allowable Cost, Fixed Fee, and Payment", the allowable indirect costs under this Contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified below.

(b) The Contractor, as soon as possible but not later than ninety (90) days after the close of each of his fiscal years during the term of this Contract, shall submit to the Contracting Officer with copies to the cognizant audit activity, the AID Inspector General, and the AID Overhead and Special Cost Branch, a proposed final overhead rate or rates for that period based on the Contractor's actual cost experience during that period, together with supporting cost data. Negotiation of final overhead rates by the Contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the Contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with Subpart 1-15.2 (Contracts for Commercial Organizations) of the Federal Procurement Regulations as in effect on the date of this Contract.

(d) The Results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this Contract upon execution and shall specify: (1) The agreed final rates, (2) the bases to which the rates apply, (3) the periods for which the rates apply, and (4) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this Contract.

(e) Pending establishment of final overhead rates for any period, the Contractor shall be reimbursed either at negotiated provisional rates as provided in the Contract or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over or under payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revisions of negotiated provisional rates specified in the Contract shall be set forth in a modification to this Contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute within the meaning of the "Dis-

putes" clause of this contract and shall be disposed of in accordance therewith.

[38 FR 28672, Oct. 16, 1973, as amended at 41 FR 4922, Feb. 3, 1976; 46 FR 31888, June 18, 1981]

§ 7-7.5001-11 Assignment of claims.

ASSIGNMENT OF CLAIMS (DECEMBER 1970)

(a) Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for monies due or to become due the Contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all dollar amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

(b) In no event shall copies of this contract or of any plans, specifications, or other similar documents relating to work under this contract, if marked "Top Secret," "Secret," or "Confidential" be furnished to any assignee of any claim arising under this contract or to any other person not entitled to receive the same. However, a copy of any part or all of this contract so marked may be furnished, or any information contained therein may be disclosed, to such assignee upon the prior written authorization of the Contracting Officer.

§ 7-7.5001-12 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1-7.103-3.

[38 FR 28673, Oct. 16, 1973]

§ 7-7.5001-13 Price reduction for defective cost or pricing data.

Insert the clause set forth in FPR 1-3.814-1(a).

§ 7-7.5001-14 Audit.

Insert the clause set forth in FPR 1-3.814-2(a) under the conditions prescribed therein.

[39 FR 21129, June 19, 1974, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-7.5001-15 Subcontractor cost or pricing data.

Insert the clause set forth in FPR 1-3.814-3(a).

[37 FR 3804, Feb. 23, 1972, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-7.5001-16 Reports.

Insert the clause set forth in AIDPR 7.5501-13.

[45 FR 44278, July 1, 1980]

§ 7-7.5001-17 Source and nationality requirements for procurement of goods and services.

Insert the clause set forth in § 7-6.5103.

[45 FR 44286, July 1, 1980]

§ 7-7.5001-18 Subcontracts.

Insert the clause set forth in FPR 1-7.402-8 under the conditions set forth therein.

[41 FR 4922, Feb. 3, 1976, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-7.5001-19 Government Property.

(a) Insert the clause set forth in FPR 1-7.203.21.

(b) The following preface is to be used with the FPR clause:

("Government property" or "Government furnished property" as used in the following clause, means non-expendable property owned by or leased to the U.S. Government and furnished to the contractor, or non-expendable property acquired by the contractor under the contract and titled to the U.S. Government. Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500. This definition applies only to personal property purchased by the contractor or delivered directly to the contractor from the vendor. Personal property issued to the contractor in the host country by the mission accountable officer and listed as non-expendable is reportable to the mission accountable officer regardless of its value.)

(c) The following final paragraph is to be added to the FPR clause specified above:

Reporting Requirements

The contractor will submit an annual report on all non-expendable property in a form and manner acceptable to AID substantially as follows:

ANNUAL REPORT OF AID OWNED NON-EXPENDABLE PROPERTY IN CONTRACTOR'S CUSTODY

(Name of Contractor)

As of (End of Contract Year), 19xx

	Motor Vehicles	Furniture and furnishings		Other nonexpendable property
		Office	Living quarters	
A. Value of property as of last report.				
B. Transactions during this reporting period.				
1. Acquisitions (add):				
a. Purchased by contractor				
b. Transferred from AID				
c. Transferred from others—without reimbursement [1]				
2. Disposals (deduct):				
a. Returned to AID				
b. Transferred to AID—contractor purchased.				
c. Transferred to other Government agencies [1].				
d. Other disposals [1]				
C. Value of property as of reporting date.				
D. Estimated average age of contractor held property.				
	Years	Years	Years	Years

[1] Explain if transactions were not processed through or otherwise authorized by AID.

Property Inventory Verifications

I attest that (1) physical inventories of AID owned nonexpendable property are taken not less frequently than annually; (2) the accountability records maintained for AID owned property in our possession are in agreement with such inventories; and (3) the total of the detailed accountability records maintained agrees with the property value shown opposite line C above, and the estimated average age of each category of property is as cited opposite line D above.

_____

Authorized Signature

[44 FR 39162, July 5, 1979]

§7-7.5001-20 Utilization of small business and small disadvantaged business concerns.

Insert the clause specified in paragraph A of OFPP Policy Letter 80-2, as contained in Attachment A of FPR Temporary Regulation 50, Supplement 2, and the following paragraph (e):

(e) Small Business Provision. To permit AID in accordance with the Small Business Provisions of the Foreign Assistance Act, to give United States Small Business firms an opportunity to participate in supplying equipment supplies and services financed under this contract, the Contractor shall, to the maximum extent possible, provide the following information to the Office of Small and Disadvantaged Business Utilization, AID, Washington, D.C. 20523, at least 45 days prior to placing any order in excess of five thousand dollars ($5,000), except where a shorter time is requested of, and granted by the Small Business Office:

(1) Brief general description and quantity of commodities or services;

(2) Closing date for receiving quotations or bids; and

(3) Address where invitations or specifications may be obtained.

[45 FR 44278, July 1, 1980]

§7-7.5001-21 Utilization of labor surplus area concerns.

Insert the clause set forth in FPR 1-1.805-3(a).

[37 FR 3804, Feb. 23, 1972, as amended at 47 FR 13145, Mar. 29, 1982]

§7-7.5001-22 Insurance-liability to third persons.

Insert the clause set forth in FPR 1-7.204-5, in accordance with FPR 1-7.404-9.

[45 FR 55725, Aug. 21, 1980]

BEST DOCUMENT AVAILABLE

§ 7-7.5001-23 Termination for default or for convenience of the Government.

Insert the clause set forth in FPR 1-8.702.

§ 7-7.5001-24 Excusable delays.

Insert the clause set forth in FPR 1-8.708.

§ 7-7.5001-25 Stop work order.

STOP WORK ORDER (DECEMBER 1970)

(a) The Contracting Officer may, at any time, by written order to the Contractor, require the Contractor to stop all, or any part, of the work called for by the contract for a period of ninety (90) days after the order is delivered to the Contractor, and for any further period to which the parties may agree. Any such order shall be specifically identified as a Stop Work Order issued pursuant to this clause. Upon receipt of such an order, the Contractor shall forthwith comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Within a period of ninety (90) days after a stop work order is delivered to the Contractor, or within any extension of that period to which the parties shall have agreed, the Contracting Officer shall either—

(i) Cancel the stop work order; or

(ii) Terminate the work covered by such order as provided in the clause of this contract entitled "Termination for Default or for Convenience of the Government".

(b) If a stop work order issued under this clause is canceled or the period of the order or any extension thereof expires, the Contractor shall resume work. An equitable adjustment shall be made in the delivery schedule, the estimated cost, the fee, or a combination thereof, and in any other provisions of the contract that may be affected, and the contract shall be modified in writing accordingly, if:

(i) The stop work order results in an increase in the time required for, or in the Contractor's cost properly allocable to, the performance of any part of this contract; and

(ii) The Contractor asserts a claim for such adjustment within thirty (30) days after the end of the period of work stoppage; provided that, if the Contracting Officer decides the facts justify such action, he may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the "Disputes" clause of this contract.

(c) If a stop work order is not canceled and the work covered by such order is terminated for the convenience of the Government, the reasonable costs resulting from the stop work order shall be allowed in arriving at the termination settlement.

§ 7-7.5001-26 Disputes.

Insert the clause set forth in FPR 1-7.102-12.

[45 FR 44278, July 1, 1980, as amended at 47 FR 25965, June 16, 1982]

§ 7-7.5001-27 Authorization and consent.

AUTHORIZATION AND CONSENT (DECEMBER 1970)

The Government hereby gives its authorization and consent for all use and manufacture of any invention described in and covered by a patent of the United States in the performance of this contract or any part hereof or any amendment hereto or any subcontract hereunder (including any lower tier subcontractor).

§ 7-7.5001-28 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in FPR 1-7.103-4 and the following paragraph (c):

(c) This clause shall be included in all subcontracts.

[37 FR 3804, Feb. 23, 1972, as amended at 38 FR 28673, Oct. 16, 1973]

§ 7-7.5001-29 Patent rights.

Insert the appropriate clause set forth in FPR 1-9.107-5 or 1-9.107-6, under the conditions stated in FPR 1-9.107-4.

[41 FR 4922, Feb. 3, 1976]

§ 7-7.5001-30 Rights in data.

RIGHTS IN DATA (DECEMBER 1970)

(a) The term "Subject Data" as used herein includes writings, sound recordings, pictorial reproductions, drawings or other graphical representations, and works of any similar nature (whether or not copyrighted) which are specified to be delivered under this contract. The term does not include financial reports, cost analyses, and other information incidental to contract administration.

(b) All Subject Data first produced in the performance of this contract shall be the sole property of the Government. The Contractor agrees not to assert any rights at common law or equity and not to establish any claim to statutory copyright in such

Data. The Contractor shall not publish or reproduce such Data in whole or in part or in any manner or form, nor authorize others to do so, without the written consent of the Government until such time as the Government may have released such Data to the public.

(c) The Contractor agrees to grant and does hereby grant to the Government and to its officers, agents and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world: (i) To publish, translate, reproduce, deliver, perform, use, and dispose of, in any manner, any and all Data not first produced or composed in the performance of this contract but which is incorporated in the work furnished under this contract; and (ii) to authorize others to do so.

(d) The Contractor shall indemnify and save and hold harmless the Government, its officers, agents and employees acting within the scope of their official duties against any liability including costs and expenses: (i) For violation of proprietary rights, copyright or right of privacy, arising out of the publication, translation, reproduction, delivery, performance, use or disposition of any Data furnished under this contract; or (ii) based upon any libelous or other unlawful matter contained in such Data.

(e) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(f) Paragraphs (c) and (d) of this section are not applicable to material furnished to the Contractor by the Government and incorporated in the work furnished under the contract; provided, such incorporated material is identified by the Contractor at the time of delivery of such work.

§ 7-7.5001-31 Release of information.

RELEASE OF INFORMATION (DECEMBER 1970)

All information gathered under this contract by the Contractor and all reports and recommendations hereunder shall be treated as confidential by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party or government other than AID, except as otherwise expressly provided in this contract.

§ 7-7.5001-32 Equal opportunity.

Insert the clause set forth in FPR 1-12.803-2.

§ 7-7.5001-33 Convict labor.

Insert the clause set forth in FPR 1-12.204.

[37 FR 3804, Feb. 23, 1972, as amended at 40 FR 3449, Jan. 22, 1975]

§ 7-7.5001-34 Walsh-Healey Public Contracts Act.

Insert the clause set forth in FPR 1-12.605.

§ 7-7.5001-35 Officials not to benefit.

Insert the clause set forth in AIDPR 7-7.102-17.

[37 FR 3804, Feb. 23, 1972, as amended at 38 FR 28673, Oct. 16, 1973; 45 FR 44278, July 1, 1980]

§ 7-7.5001-36 Covenant against contingent fees.

Insert the clause set forth in FPR 1-1.503.

§ 7-7.5001-37 Language, weights, and measures.

LANGUAGE, WEIGHTS, AND MEASURES (DECEMBER 1971)

The English language shall be used in all written communications between the parties under this contract with respect to services to be rendered and with respect to all documents prepared by the Contractor except as otherwise provided in the contract or as authorized by the Contracting Officer. Wherever weights and measures are required or authorized, all quantities and measures shall be made, computed and recorded in the metric system, unless specified otherwise in the schedule of the contract.

§ 7-7.5001-38 Security requirements.

SECURITY REQUIREMENTS (DECEMBER 1970)

(a) The provisions of the following paragraphs of this clause shall apply to the extent that this contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or administratively designated information ("Limited Official Use").

(b) Whenever the Contracting Officer or his authorized representative has assigned a security classification ("Confidential," "Secret," or "Top Secret") or administrative designation ("Limited Official Use") to the Contract or any of the items handled under the Contract, the Contracting Officer or his authorized representative shall notify the Contractor: (1) In writing of administrative designations and of any subsequent revi-

sions in such designation, or (2) by use of "Security Requirements Check List" (Form DD 254) for classified information and any subsequent revisions in such classification.

(c) To the extent the Contracting Officer or his authorized representative has indicated as of the date of this Contract, or thereafter indicates security classification or administrative designation under this Contract, as provided in paragraph (b) of this section, the Contractor shall safeguard all classified and administratively designated items handled under this Contract and shall provide and maintain a system of security controls within his own organization. For classified information the system of security controls shall be in accordance with Department of Defense Security Agreement (DD Form 441), including the DOD Industrial Security Manual for Safeguarding Classified Information (DOD 5220.22-M). Instructions for safeguarding of administratively designated information are provided in Uniform State/AID/USIA Regulations (Volume 5, Foreign Affairs, Manual, Chapter 900), a copy of which will be furnished by the Contracting Officer or Mission Director.

(d) Representatives of the Department of Defense and/or AID having security cognizance over the facility shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the Contractor in complying with the security requirements under this Contract. Should the Government, through these representatives determine that the Contractor is not complying with the security requirements of this Contract, the Contractor shall be informed in writing by the cognizant Security Office of the Department of Defense and/or AID of the proper action to be taken in order to effect compliance with such requirements. The Contractor shall not be entitled to an adjustment in contract price, delivery schedule or both for required changes to his security procedures, methods or facilities in order that such procedures, methods and facilities be in compliance with the contract security requirements.

(e) If, subsequent to the date of this Contract, the security classifications or security requirements under this Contract are changed by the Government as provided in this clause and the security costs or time required for delivery under this Contract are thereby increased or decreased, the contract price, delivery schedule, or both and any other provision of the Contract that may be affected shall be subject to an equitable adjustment by reason of such increased or decreased costs. Any claim for adjustment under this clause must be asserted to the Contracting Officer within sixty (60) days from the date of receipt by the Contractor of the notification of change in security classification or security requirements unless extended in writing by the Contracting Officer.

(f) The Contractor shall not permit any alien access to classified or administratively controlled information.

(g) The Contractor agrees to insert, in all subcontracts hereunder which involve access to classified or administratively designated information, provisions which shall conform substantially to the language of this Clause, including this paragraph (g).

(h) The Contractor also agrees that he shall determine that any subcontractor proposed by him for the furnishing of supplies and services which will involve access to classified or administratively designated information in the Contractor's custody has been granted an appropriate facility security clearance, which is still in effect, prior to being accorded access to such classified or administratively designated information.

(i) The Contractor agrees to notify the Contracting Officer in writing after completion of the work under this Contract that: (1) All classified or administratively designated information which was in his possession during the performance of the Contract has been disposed of in accordance with existing DOD and/or AID security requirements, or (2) no classified or administratively designated information came into his possession or any of his employees' possession during the performance of the Contract.

§ 7-7.5001-39 Notices.

NOTICES (DECEMBER 1970)

Any notice given by any of the parties hereunder shall be sufficient only if in writing and delivered in person or sent by telegraph, cable, or registered or regular mail as follows:

To A.I.D.: Administrator, Agency for International Development, Washington, D.C. 20523. Attention: Contracting Officer (the name of the cognizant Contracting Officer with a copy to the appropriate Mission Director).

To Contractor: At Contractor's address shown on the or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective when delivered in accordance with this clause or on the effective date of the notice, whichever is later.

§ 7-7.5001-40 Small business and small disadvantaged business subcontracting plan/incentive subcontracting program.

Insert the appropriate clause from paragraphs C, D, or E of OFPP Policy

Letter 80-2, as contained in Attachment A of FPR Temporary Regulation 50, Supplement 2, under the conditions specified therein.

[45 FR 44278, July 1, 1980]

§ 7-7.5001-41 Disabled veterans and veterans of the Vietnam era.

Insert the clause set forth in FPR Temporary Regulation 39.

[45 FR 44278, July 1, 1980]

§ 7-7.5001-42 Personnel compensation.

PERSONNEL COMPENSATION (DECEMBER 1981)

Direct compensation of the Contractor's personnel will be in accordance with the Contractor's established policies, procedures, and practices, and the cost principles applicable to this Contract. Compensation (the employee's base salary plus overseas recruitment incentive, if any) which exceeds the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1, as set forth in the payment schedule of the Uniform State/AID/USIA Regulation, as from time to time amended, must be specifically approved in writing by the Contracting officer in order to be reimbursed under this Contract.

[46 FR 31888, June 18, 1981, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-7.5001-43 Employment of the handicapped.

Insert the clause set forth in FPR Temporary Regulation 38.

[45 FR 44278, July 1, 1980]

§ 7-7.5001-44 Clean air and water.

Insert the clause set forth in FPR 1-1.2302-2 under the conditions set forth therein.

[42 FR 4842, Jan. 26, 1977]

§ 7-7.5001-45 Use of Government facilities or personnel.

USE OF GOVERNMENT FACILITIES OR PERSONNEL (MAY 1978)

(a) The Contractor and any employee or consultant of the Contractor is prohibited from using U.S. Government facilities (such as office space or equipment) or U.S. Government clerical or technical personnel in the performance of the services specified in the Contract, *unless* the use of Government facilities or personnel is specifically authorized in the Contract, or is authorized in advance, in writing, by the contracting officer.

(b) If at any time it is determined that the Contractor, or any of its employees or consultants have used U.S. Government facilities or personnel without authorization either in the Contract itself, or in advance, in writing, by the contracting officer, then the amount payable under the Contract shall be reduced by an amount equal to the value of the U.S. Government facilities or personnel used by the Contractor, as determined by the contracting officer.

(c) If the parties fail to agree on an adjustment made pursuant to this clause, it shall be considered a dispute, and shall be dealt with under the terms of the Disputes clause of the Contract.

[45 FR 44278, July 1, 1980]

§ 7-7.5001-46 Utilization of women-owned business concerns.

Insert the clause entitled "Utilization of Women-Owned Business Concerns (Over $10,000)" as specified in OFPP Policy Letter 80-4, as contained in Attachment A of FPR Temporary Regulation 54.

[45 FR 44278, July 1, 1980]

§ 7-7.5002 Additional clauses.

These additional clauses are mandatory for cost-plus-fixed-fee contracts and with necessary modifications, for other types of cost-reimbursement contracts which will be performed in whole or in part outside the United States. (These clauses are in addition to the clauses set forth in § 7-7.5001.)

§ 7-7.5002-1 Definitions.

DEFINITIONS (SEPTEMBER 1981)

(a) "Dependents" shall mean:

(1) Spouse.

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self support.

(3) Parents (including step and legally adoptive parents), of the employee (including TCN employees) or of the spouse, when such parents are at least 51 percent dependent on the employee (including TCN employees) for support.

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the employee (including TCN employees), or of the spouse, when such sisters and brothers are at least 51 percent dependent on the em-

ployee (including TCN employees) for support, unmarried and under 21 years of age, or regardless of age, are incapable of self support.

(b) "Local currency" shall mean the currency of the Cooperating Country.

(c) "Regular Employee" shall mean a Contractor employee appointed to serve one year or more in the Cooperating Country.

(d) "Short Term Employee" shall mean a Contractor employee appointed to serve less than one year in the Cooperating Country.

(e) "Traveler" shall mean Contractor's Regular Employees, Dependents of the Contractor's Regular Employees, the Contractor's Short Term Employees, Consultants and, as authorized by the Contracting Officer, the Contractor's Officers and Executives, or other persons.

(f) "Contractor's Chief of Party" shall mean the representative of the Contractor in the Cooperating Country who shall be responsible for supervision of the performance of all duties undertaken by the Contractor in the Cooperating Country.

(g) "Third country national (TCN) employee" means an individual who meets the citizenship requirements of AIDPR 7-1.260 and is hired while residing outside the United States for work in a cooperating country.

(h) "Cooperating country national (CCN) employee" means an individual who meets the citizenship requirements of AIDPR 7-1.261 and is hired while residing outside the United States for work in a cooperating country.

[37 FR 3804, Feb. 23, 1972, as amended at 39 FR 21129, June 19, 1974; 46 FR 51916, Oct. 23, 1981]

§ 7-7.5002-2 Leave and holidays.

Insert the clause set forth in AIDPR § 7-7.5502-6 (41 CFR 7-7.5502-6), with the following revisions:

(a) Delete the term "* * * on campus * * *" as it appears in paragraphs (a) and (b);

(b) Delete the term "* * * on campus * * *" as it appears in paragraph (c)(6), and in its place insert the term "* * * at the contractor's home office * * *"; and

(c) Add the following paragraph (e):

(e) *Military leave.* Military leave of not more than 15 calendar days in any calendar year may be granted in accordance with the Contractor's usual practice to each regular employee whose appointment is not limited to 1 year or less and who is a reservist of the United States Armed Forces, provided that such military leave has been approved in advance by the cognizant Mission Director or Assistant Administrator. A copy of any such approval shall be provided to the Contracting Officer.

[47 FR 13145, Mar. 29, 1982]

§ 7-7.5002-3 Travel expenses.

TRAVEL EXPENSES (SEPTEMBER 1981)

(a) *International travel.* Prior written approval by the contracting officer is required for all international travel directly and identifiably funded by AID under this contract. The Contractor shall therefore present to the contracting officer an itinerary for each planned international trip, showing the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advance of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. The contracting officer's prior written approval may be in the form of a letter or telegram or similar device, or may be specifically incorporated into the Schedule of the Contract. At least one week prior to commencement of approved international travel, the Contractor shall notify the cognizant Mission, with a copy to the contracting officer, of planned travel, identifying the travelers and the dates and times of arrival. The Contractor shall be reimbursed for actual travel costs and travel allowances of travelers from place of residence in the United States (or other location provided that the cost of such travel does not exceed the cost of travel from the employee's residence in the United States) to the post of duty in the Cooperating Country and return to place of residence in the United States (or other location: *Provided,* That the cost of such travel does not exceed the cost of travel from the post of duty in the Cooperating Country to the employee's residence) upon completion of services by the individual. Such travel costs and travel allowances shall not be reimbursed in an amount greater than economy class commercially scheduled air travel by the most expeditious route, except as otherwise provided in paragraph (g) of this section, and unless economy air travel or economy air travel space are not available and the Contractor certifies to this in the voucher documents retained as part of his Contract records. When travel is by economy class accommodations, the Contractor will be reimbursed for the costs of transporting up to twenty-two (22) pounds of accompanied personal baggage per traveler in addition to that regularly allowed with the economy ticket provided that the total number of pounds of baggage does not

exceed that regularly allowed for first-class travelers. If the cost of economy class accommodations plus the cost of transporting twenty-two pounds of additional accompanied personal baggage equals or exceeds the cost of first class accommodations, first class accommodations may be used. Travel allowances for travelers shall not be in excess of six dollars ($6) per day for persons eleven (11) years of age, or over, or three dollars ($3) per day for persons under eleven (11) years of age, for not more than the travel time required by scheduled economy class commercial air carrier using the most expeditious route and computed in accordance with the Federal Travel Regulations as from time to time amended. One (1) stopover en route for a period of not to exceed twenty-four hours is allowable when the traveler uses economy class accommodations for a trip of fourteen (14) hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route or is delayed for the convenience of the traveler. Per diem during such stopover shall be paid in accordance with the established practice of the Contractor but not to exceed the amounts stated in the Federal Travel Regulations, as from time to time amended.

(b) *Local travel.* Reimbursement for local travel shall not be in excess of the rates established by the Mission Director for the travel costs of travelers in the Cooperating Country in connection with duties directly referable to the Contract. In the absence of such established rates, the Contractor shall be reimbursed for actual travel costs of travelers in the Cooperating Country, if not provided by the Cooperating Government or the Mission, in connection with duties directly referable to the Contract, including travel allowances at rates not in excess of those prescribed by the Federal Travel Regulations as from time to time amended.

(c) *Travel for consultation.* The Contractor shall be reimbursed for the round trip of the Contractor's Chief of Party in the Cooperating Country or other designated Contractor employee or consultant in the Cooperating Country performing services required under this Contract, for travel from the Cooperating Country to the Contractor's office in the United States or to AID/Washington for consultation and return on occasions deemed necessary by the Contractor and approved in advance, in writing, by the Contracting Officer or the Mission Director.

(d) *Special international travel and third country travel.* For special travel which advances the purpose of the contract, which is not otherwise provided by the Cooperating Government, and with the prior written approval of the Contracting Officer or the Mission Director, the Contractor shall be reimbursed for (i) the travel cost of travelers other than between the United States and the Cooperating Country and for local travel within other countries and (ii) travel allowance for travelers while in travel status and while performing services hereunder in such other countries at rates not in excess of those prescribed by the Federal Travel Regulations, as amended.

(e) *Indirect travel for personal convenience.* When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of economy class air fare via the direct usually traveled route. If such costs include fares for air or ocean travel by foreign flag carriers, approval for indirect travel by such foreign flag carriers must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by United States-flag carriers will be reimbursable within the above limitation of allowable costs.

(f) *Limitation on travel by dependents.* Travel costs and allowances will be allowed only for dependents of regular employees and such costs shall be reimbursed for travel from place of abode to assigned station in the Cooperating Country and return, only if dependent remains in the Country for at least nine (9) months or one-half of the required tour of duty of the regular employee responsible for such dependent, whichever is greater.

If the dependent is eligible for educational travel pursuant to the General Provision entitled "Differential and Allowances", time spent away from post resulting from educational travel will be counted as time at post.

(g) *Delays en route.* The Contractor may grant to travelers under this Contract reasonable delays en route, not circuitous in nature, while in travel status, caused by events beyond the control of such traveler or Contractor. It is understood that if delay is caused by physical incapacitation, personnel shall be eligible for such sick leave as is provided under paragraph (b) of the clause of this Contract entitled "Leave and Holidays".

(h) *Travel by privately owned automobile.* The Contractor shall be reimbursed for the cost of travel performed by a regular employee in his privately owned automobile at rate not to exceed fifteen cents (15¢) per mile plus authorized per diem for the employee and for each of the authorized dependents traveling in the automobile if the automobile is being driven to or from the Cooperating Country as authorized under the Contract; *Provided,* That the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by (1)

surface common carrier or (2) less than first-class air, whichever is the lesser.

(i) *Emergency and irregular travel and transportation.* Actual transportation costs and travel allowances while en route, as provided in this section, will also be reimbursed under the following conditions:

(1) The costs of going from post of duty in the cooperating country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location for Contractor employees and dependents and returning to the post of duty, when the Contractor's Chief of Party makes a written determination that such travel is necessary for one of the reasons specified in paragraph (i)(1) (i) and (ii) of this section. A copy of the written determination shall be furnished to the Contracting Officer.

(i) Need for medical care beyond that available within the area to which the employee is assigned, or serious effect on physical or mental health if residence is continued at the assigned post of duty, subject in either case to the limitations stated in the provision of this contract entitled "Physical Fitness of Employee and Dependents". The Mission Director may authorize a medical attendant to accompany the employee at contract expense if, based on medical opinion, such an attendant is necessary.

(ii) Death or serious illness or injury of a member of the immediate family of the employee or spouse. "Serious illness or injury" and "immediate family" are defined in accordance with Section 699.5 of the Uniform State/AID/USIA Regulations, as in effect on the date of such travel.

(2) When, for any reason, the Mission Director determines it is necessary to evacuate the Contractor's entire team (*i.e.*, employees and dependents or dependents only), the Contractor will be reimbursed for actual travel and transportation expenses and travel allowances while en route, for the cost of the individuals going from post of duty in the cooperating country to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other approved location. The return of such employees and dependents may also be authorized by the Mission Director, when, in his discretion, he determines it is prudent to do so.

(3) The Mission Director may also authorize emergency or irregular travel and transportation in other situations, when in his opinion, the circumstances warrant such action. The authorization shall include the kind of leave to be used and appropriate restrictions as to time away from post, transportation of personal and/or household effects, etc. Requests for such emergency travel shall be submitted through the Contractor's Chief of Party.

(4) If a regular employee does not complete one full year at post of duty (except for reasons beyond his control, the costs of going to and from the post of duty are not reimbursable hereunder. If the employee serves more than one year but less than the required service in the cooperating country (except for reasons beyond his control), the costs of going to the post of duty are reimbursable hereunder, but the costs of going from post of duty to the employee's permanent, legal place of residence at the time he or she was employed for work under this contract or other location are not reimbursable under this contract.

(j) *Home leave travel.* TCN and CCN employees are not eligible for home leave unless authorized in advance by the cognizant Mission Director, and consequently are not eligible for home leave travel unless authorized in advance by the cognizant Mission Director. A copy of any such authorization shall be provided to the Contracting Officer. The Contractor shall be reimbursed for the cost of travel performed by regular employees and dependents for purposes of home leave provided that such reimbursement does not exceed that authorized by the Uniform State/AID/USIA Foreign Service Travel Regulations.

(k) *Rest and recuperation travel.* The Contractor shall be reimbursed for the cost of travel performed by regular employees and dependents for purposes of rest and recuperation: *Provided,* That, such reimbursement does not exceed that authorized Mission employees, e.g., required length of service at the post of assignment unbroken by home leave: *And provided further,* That no reimbursement will be made unless approval is given by the Contractor's Chief of Party.

[39 FR 21129, June 19, 1974, as amended at 39 FR 38646, Nov. 1, 1974; 40 FR 3449, Jan. 22, 1975; 41 FR 4922, Feb. 3, 1976; 42 FR 4842, Jan. 26, 1977; 46 FR 51916, Oct. 23, 1981]

§ 7-7.5002-4 Title to and care of property.

TITLE TO AND CARE OF PROPERTY

(MARCH 1979)

(a) Title to all non-expendable property purchased with contract funds under this contract and used in the Cooperating Country, shall at all times be in the name of the Cooperating Government, or such public or private agency as the Cooperating Government may designate, unless title to specified types or classes of non-expendable property is reserved to the AID under provisions set forth in the Schedule of this contract; but all such property shall be under the custody and control of contractor until the owner of title directs otherwise, or completion of

work under this contract or its termination, at which time custody and control shall be turned over to the owner of title or disposed of in accordance with its instructions. All performance guaranties and warranties obtained from suppliers shall be taken in the name of the title owner. (Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of $500 or more. This definition applies only to personal property purchased by the contractor or delivered directly to the contractor from the vendor. Personal property issued to the contractor in the host country by the mission accountable officer and listed as non-expendable is reportable to the mission accountable officer regardless of its value.)

(b) Contractor shall prepare and establish a program, to be approved by the Mission, for the receipt, use, maintenance, protection, custody and care of non-expendable property, for which it has custodial responsibility, including the establishment of reasonable controls to enforce such program.

(c)(1) For non-expendable property to which title is reserved to the U.S. Government under provisions set forth in the schedule of this contract, contractors shall submit an annual report on all non-expendable property under his custody as required in the Government Property clause of this contract.

(2) For non-expendable property titled to the Cooperating Government, the contractor shall, within 90 days after completion of this contract, or at such other date as may be fixed by the contracting officer, submit an inventory schedule covering all items of non-expendable property under his custody, which have not been consumed in the performance of this contract. The contractor shall also indicate what disposition has been made of such property.

[44 FR 39163, July 5, 1979]

§ 7-7.5002-5 Marking.

MARKING (AUGUST 1980)

(a) It is AID policy that AID-financed commodities and shipping containers, and project construction sites and other project locations be suitably marked with the AID red, white, and blue handclasp emblem. Shipping containers are also to be marked with the last five digits of the AID financing document number. As a general rule, marking is not required for raw materials shipped in bulk (such as coal, grain, etc.), or for semifinished products which are not packaged.

(b) Specific guidance on marking requirements should be obtained prior to procurement of commodities to be shipped, and as early as possible for project construction sites and other project locations. This guidance will be provided through the cognizant technical office indicated on the Cover Page of this contract, or by the Mission Director in the Cooperating Country to which commodities are being shipped, or in which the project site is located.

(c) Authority to waive marking requirements is vested with the Regional Assistant Administrators, and with Mission Directors.

(d) A copy of any specific marking instructions, or waivers from marking requirements is to be sent to the Contracting Officer; the original should be retained by the Contractor.

[45 FR 55725, Aug. 21, 1980]

§ 7-7.5002-6 Personnel.

Insert the clause set forth in AIDPR 7-7.5502-3 (41 CFR 7-7.5502-3).

[46 FR 51916, Oct. 23, 1981]

§ 7-7.5002-7 Differentials and allowances.

DIFFERENTIAL AND ALLOWANCES (SEPTEMBER 1981)

This clause *does not* apply to TCN or CCN employees. TCN and CCN employees are not eligible for differentials and allowances, unless specifically authorized by the cognizant Assistant Administrator or Mission Director. A copy of any such authorization shall be provided to the Contracting Officer.

(a) *Post differential.* Post differential is an additional compensation for service at places in foreign areas where conditions of environment differ substantially from conditions of environment in the continental United States and warrant additional compensation as a recruitment and retention incentive.

In areas where post differential is paid to AID direct-hire employees, post differential not to exceed the percentage of salary as is provided such AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 500 (except the limitation contained in Section 552, "Ceiling on Payments") Tables-Chapter 900, as from time to time amended, will be reimbursable hereunder for employees in re-

spect to amounts earned during the time such employees actually spend overseas on work under this Contract. When such post differential is provided to contractor employees, it shall be payable beginning on the date of arrival at the post of assignment and continue, including periods away from post on official business, until the close of business on the day of departure from post of assignment en route to the United States. Sick or vacation leave taken at away from the post of assignment will not interrupt the continuity of the assignment or require a discontinuance of such post differential payments, provided such leave is not taken within the United States or the territories of the United States. Post differential will not be payable while the employee is away from his post of assignment for purposes of home leave. Short term employees shall be entitled to post differential beginning with the forty-third (43rd) day at post."

(b) *Living quarters allowance.* Living quarters allowance is an allowance granted to reimburse an employee for substantially all of his cost for either temporary or residence quarters whenever Government-owned or Government-rented quarters are not provided to him at his post without charge. Such costs are those incurred for temporary lodging (temporary lodging allowance) or one unit of residence quarters (living quarters allowance) and include rent, plus any costs not included therein for heat, light, fuel, gas, electricity and water. The temporary lodging allowance and the living quarters allowance are never both payable to an employee for the same period of time.

The Contractor will be reimbursed for payments made to employees for a living quarters allowance for rent and utilities if such facilities are not supplied. Such allowance shall not exceed the amount paid AID employees of equivalent rank in the Cooperating Country, in accordance with either the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 130, as from time to time amended, or other rates approved by the Mission Director. Subject to the written approval of the Mission Director, short-term employees may be paid per diem (in lieu of living quarters allowance) at rates prescribed by the Federal Travel Regulations, as from time to time amended, during the time such short-term employees spend at posts of duty in the Cooperating Country under this Contract. In authorizing such per diem rates, the Mission Director shall consider the particular circumstances involved with respect to each such short-term employee including the extent to which meals and/or lodging may be made available without charge or at nominal cost by an agency of the United States Government or of the Cooperating Government, and similar factors.

(c) *Temporary lodging allowance.* Temporary lodging allowance is a quarters allowance granted to an employee for the reasonable cost of temporary quarters incurred by the employee and his family for a period not in excess of: (i) Three months after first arrival at a new post in a foreign area or a period ending with the occupation of residence (permanent) quarters, if earlier, and (ii) one (1) month immediately preceding final departure from the post subsequent to the necessary vacating of residence quarters.

The Contractor will be reimbursed for payments made to employees and authorized dependents for temporary lodging allowance, in lieu of living quarters allowance, not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 120, as from time to time amended.

(d) *Post allowance.* Post allowance is a cost-of-living allowance granted to an employee officially stationed at a post where the cost of living, exclusive of quarters costs, is substantially higher than in Washington, D.C.

The Contractor will be reimbursed for payments made to employees for post allowance not to exceed those paid AID employees in the Cooperating Country, in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 220, as from time to time amended.

(e) *Supplemental post allowance.* Supplemental post allowance is a form of post allowance granted to an employee at his post when it is determined that assistance is necessary to defray extraordinary subsistence costs.

The Contractor will be reimbursed for payments made to employees for supplemental post allowance not to exceed the amount set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 230, as from time to time amended.

(f) *Educational allowance.* Educational allowance is an allowance to assist an employee in meeting the extraordinary and necessary expenses, not otherwise compensated for, incurred by reason of his service in a foreign area in providing adequate elementary and secondary education for his children.

The Contractor will be reimbursed for payments made to regular employees for educational allowances for their dependent children in amounts not to exceed those set forth in the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 270, as from time to time amended.

(g) *Educational travel.* Educational travel is travel to and from a school in the United States for secondary education (in lieu of an

educational allowance) and for college education.

The Contractor will be reimbursed for payments made to regular employees for educational travel for their dependent children provided such payment does not exceed that which would be payable in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 280, as from time to time amended. Educational travel shall not be authorized for regular employees whose assignment is less than two years.

(h) *Separate maintenance allowance.* Separate maintenance allowance is an allowance to assist an employee who is compelled, by reason of dangerous, notably unhealthful, or excessively adverse living conditions at his post of assignment in a foreign area, or for the convenience of the Government, to meet the additional expense of maintaining his dependents elsewhere than at such post.

The Contractor will be reimbursed for payments made to regular employees for a separate maintenance allowance not to exceed that made to AID employees in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 260, as from time to time amended.

(i) *Payments during evacuation.* The Standardized Regulations (Government Civilians, Foreign Areas) provide the authority for efficient, orderly, and equitable procedure for the payment of compensation, post differential and allowances in the event of an emergency evacuation of employees or their dependents, or both, from duty stations for military or other reasons or because of imminent danger to their lives.

If evacuation has been authorized by the Mission Director the Contractor will be reimbursed for payments made to employees and authorized dependents evacuated from their post of assignment in accordance with the Standardized Regulations (Government Civilians, Foreign Areas), Chapter 600, and the United States Federal Travel Regulations, as from time to time amended.

[39 FR 21130, June 19, 1974, as amended at 40 FR 3449, Jan. 22, 1975; 46 FR 51916, Oct. 23, 1981]

§ 7-7.5002-8 Conversion of U.S. dollars to local currency.

CONVERSION OF UNITED STATES DOLLARS TO LOCAL CURRENCY (DECEMBER 1970)

Upon arrival in the Cooperating Country, and from time to time as appropriate, the Contractor's Chief of Party shall consult with the Mission Director who shall provide, in writing, the procedure the Contractor and his employees shall follow in the conversion of United States dollars to local currency. This may include, but is not limited to, the conversion of said currency through the cognizant United States Disbursing Officer or Mission Controller, as appropriate.

§ 7-7.5002-9 Orientation and language training.

ORIENTATION AND LANGUAGE TRAINING (DECEMBER 1970)

(a) Regular employees shall receive a maximum of two weeks AID orientation before travel overseas. The dates of orientation shall be selected by the Contractor and approved by the Contracting Officer from the orientation schedule provided by AID.

(b) As either set forth in the Contract Schedule, or provided in writing by the Contracting Officer, the following may be authorized taking into consideration specific job requirements, an employee's prior overseas experience, or unusual circumstances, in connection with orientation of individual Contractor employees:

(1) Modified orientation.

(2) Language training.

(3) Orientation for regular employee's dependents at Contract expense.

(4) Contractor-sponsored orientation program.

(5) Waiver or orientation for individual Contractor employees.

(c) Transportation costs and travel allowances not to exceed one round trip from regular employee's residence to place of orientation and return will be reimbursed, pursuant to the provisions of the clause of this Contract entitled "Travel and Transportation Expenses", if the orientation is more than 50 miles from the regular employee's residence. Allowable salary costs during the period of orientation are also reimbursable.

(d) Contractor employee participation in AID orientation does not in any way relieve the Contractor of his responsibility for assuring that the employee is properly oriented in all matters related to the administrative, logistical, and technical aspects of his movement to, and tour of duty in, the Cooperating Country as provided for elsewhere in this Contract.

§ 7-7.5002-10 Insurance—workmen's compensation, private automobiles, marine and air cargo.

INSURANCE—WORKMEN'S COMPENSATION, PRIVATE AUTOMOBILES, MARINE, AND AIR CARGO (DECEMBER 1977)

(a) *Workmen's compensation insurance.*

(Insert paragraphs (1) through (4) of the clause set forth in AIDPR 7-10.402(a).)

(b) *Insurance on private automobiles.* If Contractor or any of its employees or their dependents transport or cause to be trans-

ported (whether or not at contract expense) privately owned automobiles to the Cooperating Country, or they or any of them purchase an automobile within the Cooperating Country, Contractor agrees to make certain that all such automobiles during such ownership within the Cooperating Country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director payable in United States dollars or its equivalent in the currency of the Cooperating Country: injury to persons, $10,000/$20,000; property damage, $5,000. Contractor further agrees to deliver or cause to be delivered to the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobiles are operated within the Cooperating Country. The premium costs for such insurance shall not be a reimbursable cost under this contract.

(c) *Marine and air cargo insurance.* Contractor may obtain cargo insurance on equipment, materials, and supplies procured under this contract only after obtaining the prior written approval of the Contracting Officer.

[37 FR 3804, Feb. 23, 1972, as amended at 39 FR 21131, June 19, 1974; 43 FR 15628, Apr. 14, 1978]

§ 7-7.5002-11 Services provided to contractor.

SERVICES PROVIDED TO CONTRACTOR
(DECEMBER 1970)

In the event the United States Government or Cooperating Government has furnished the Contractor free of charge with items or services which are covered herein as allowable costs, whether direct or indirect, reimbursement may not be claimed for such items or services.

§ 7-7.5002-12 Post privileges.

Insert the clause set forth in AIDPR 7-7.5502-7.

[38 FR 28674, Oct. 16, 1973]

§ 7-7.5002-13 Contractor-mission relationships.

Insert the clause set forth in AIDPR 7-7.5502-2 (41 CFR 7-7.5502-2), deleting paragraph (c), and redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e), respectively.

[46 FR 51916, Oct. 23, 1981]

§ 7-7.5002-14 Notice of changes in regulations.

NOTICE OF CHANGES IN REGULATIONS
(DECEMBER 1970)

Changes in allowances shall be effective 30 days after the effective date of such changes for AID direct-hire employees or on the date of notice, whichever is later. Notice of changes shall be sufficient as provided in the Clause of this contract entitled "Notices".

§ 7-7.5002-15 Transportation and storage expenses.

TRANSPORTATION AND STORAGE EXPENSES
(AUGUST 1980)

(a) Transportation of Motor Vehicles, Personal Effects and Household Goods.

Transportation, including packing and crating costs, will be paid for shipping from the point of origin in the United States (or other location as approved by the Contracting Officer) to post of duty in the Cooperating Country and return to point of origin in the United States (or other location as approved by the Contracting Officer):

(1) Of one privately-owned vehicle for each regular employee,

(2) Of personal effects of travelers, and

(3) Of household goods of each regular employee not to exceed the following limitations:

	Basic household furniture not supplied (pounds net weight)	Basic household furniture supplied (pounds net weight)
Regular employee with dependents in cooperating country	7,500	2,500
Regular employee without dependents in cooperating country	4,500	1,500

NOTE.—For the purpose of this clause, "net weight" and "gross weight" are defined and determined in accordance with the provisions of § 162.1 of the Uniform State/AID/USIA Foreign Service Travel Regulations.

The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating and transportation by surface. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the Cooperating Country, the cost of boxing or crating is not reimbursable. The transportation of a privately-owned motor vehicle for a regular employee may be authorized by the Contractor, as replacement of the last such motor vehicle shipped under this Contract for such employee when the Mission Director or his designee determines in advance

and so notifies the Contractor in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the regular employee. The determination shall be made under the same rules and regulations that apply to Mission employees.

(b) *Unaccompanied baggage.* The Contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance above for household effects) not to exceed the following:

	Gross weight (pounds)
Employee	250
First dependent traveling	200
Second dependent traveling	150
Each additional dependent traveling	100

This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used.

Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival at destination. To permit the arrival of effects to coincide with the arrival of regular employees and dependents, consideration should be given to advance shipments of unaccompanied baggage.

The foregoing provisions concerning "unaccompanied baggage" is also applicable to home leave travel. The foregoing provision "unaccompanied baggage" is also applicable to short-term employees when these are authorized by the terms of this Contract.

(c) *Storage of household effects.* The cost of storage charges (including packing, crating and drayage costs) in the U.S. of household goods of regular employees will be permitted in lieu of transportation of all or any part of such goods to the Cooperating Country under paragraph (a) of this section: *Provided,* That the total amount of household goods shipped to the Cooperating Country and stored in the U.S. shall not exceed 4,500 pounds net for each regular employee without dependents in the Cooperating Country and 7,500 pounds net for each regular employee with dependents in the Cooperating Country.

(d) *International ocean transportation.*

(1) Flag eligibility requirements for ocean carriers is covered by paragraph (c)(2) of the General Provision entitled Source and Nationality Requirements of this contract.

(i) Transportation of things. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Transportation Support Division, Office of Commodity Management, Agency for International Development, Washington, D.C. 20523, or the Mission Director, as appropriate, giving the basis for the request.

(ii) Transportation of persons. Where U.S. flag vessels are not available, or their use would result in a significant delay, the Contractor may obtain a release from this requirement from the Contracting Officer or the Mission Director, as appropriate.

(2) Transportation of foreign-made vehicles. Reimbursement of the costs of transporting a foreign (non-U.S.) made motor vehicle will be made in accordance with the provisions of the Uniform State/AID/USIA Foreign Service Travel Regulations, as from time to time amended.

(3) Reduced rates on U.S. flag carriers. Reduced rates on United States flag carriers are in effect for shipments of household goods and personal effects of AID contract personnel. These reduced rates are available provided the shipper states on the bill of lading that the cargo is "Personal property—not for resale—payment of freight charges is at U.S. Government (AID) expense and any special or diplomatic discounts accorded this type cargo are applicable." The Contractor will not be reimbursed for shipments of household goods or personal effects in amount in excess of the reduced rates available in accordance with the foregoing.

[39 FR 21131, June 19, 1974, as amended at 42 FR 4842, Jan. 26, 1977; 45 FR 44286, July 1, 1980; 45 FR 55725, Aug. 21, 1980]

§ 7-7.5002-16 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1-1.323-2.

[42 FR 4842, Jan. 26, 1977]

§ 7-7.5002-17 Use of pouch facilities.

USE OF POUCH FACILITIES (NOVEMBER 1980)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID contractors and their employees as a general policy, as detailed in paragraphs (a)(1) through (a)(7) of this section; however, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities as hereinafter stated, the contractor and its employees agree to idemnify and hold harmless the De-

partment of State and AID against loss or damage occurring in pouch transmission.

(1) Contractors and their employees are authorized use of the pouch for transmission and receipt of up to a maximum of 2 pounds per shipment of correspondence and documents needed in the administration of foreign assistance programs.

(2) U.S. citizen employees are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see paragraph (a)(3) of this section).

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official mail pursuant to paragraph (a)(1) of this section sent by pouch should be addressed as follows:

Name of individual or organization (followed by letter symbol "C"), Name of post (USAID/———), Agency for International Development, Washington, D.C. 20523.

(5) Personal mail pursuant to paragraph (a)(2) of this section should be sent to the address specified in paragraph (a)(4) of this section, but without the name of the organization.

(6) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(7) AID contractor personnel are *not* authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch, may, however, accept official mail from contractors and letter mail from their employees for the pouch, provided of course, adequate postage is affixed.

(b) The contractor shall be responsible for advising its employees of this authorization and these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

[46 FR 10914, Feb. 5, 1981]

§ 7-7.5003 Clauses to be used when applicable.

§ 7-7.5003-1 Alterations in contract.

ALTERATIONS IN CONTRACT (DECEMBER 1970)

The following alterations have been made in the provisions of this contract.

§ 7-7.5003-2 Care of laboratory animals.

Insert the following clause in applicable contracts to be performed in the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States:

CARE OF LABORATORY ANIMALS (SEPTEMBER 1974)

(a) Before undertaking performance of any contract involving the use of laboratory animals, the Contractor shall register with the Secretary of Agriculture of the United States in accordance with section 6, Pub. L. 89-544, Laboratory Animal Welfare Act, August 24, 1966, as amended by Pub. L. 91-579, Animal Welfare Act of 1970, December 24, 1970. The Contractor shall furnish evidence of such registration to the Contracting Officer.

(b) The Contractor shall acquire animals to be used in research under this contract only from dealers licensed by the Secretary of Agriculture, or from exempted sources in accordance with the Public Laws enumerated in paragraph (a) of this section.

(c) In the care of any experimental warmblooded animal used or intended for use in the performance of this contract, the Contractor shall comply with: the Public Laws enumerated in paragraph (a) of this section; regulations issued thereunder (Title 9, Code of Federal Regulations, Parts 1, 2 and 3, entitled "Laboratory Animal Welfare"); the principles enunciated in the "Guide for Laboratory Animal Facilities and Care" prepared by the Institute of Laboratory Animal Resources, National Academy of Sciences-National Research Council (Public Health Service Publication No. 1024); and the terms of this contract. In the event of any conflict among the standards prescribed by the foregoing, the higher standards shall be used.

NOTE: The Contractor may request registration of its facility and a current listing of licensed dealers from the Veterinarian in Charge, Animal Health Division, USDA, in the capital city of the state in which his research facility is located. (In Florida, the office of the Veterinarian in Charge is in Jacksonville.)

[39 FR 21132, June 19, 1974]

90-137 O—82—6

§ 7-7.5003-3 Family planning and population assistance activities.

The following clauses (a), (b), and (c) are applicable to all contracts involving any aspect of family planning or population activities.

FAMILY PLANNING AND POPULATION ASSISTANCE ACTIVITIES (MAY 1982)

(a) *Voluntary Participation.* (1) The Contractor agrees to take any steps necessary to ensure that funds made available under this contract will not be used to coerce any individual to practice methods of family planning inconsistent with such individual's moral, philosophical, or religious beliefs. Further, the Contractor agrees to conduct its activities in a manner which safeguards the rights, health and welfare of all individuals who take part in the program.

(2) The Contractor shall insert the substance of this clause in any subgrants, subcontracts, purchase orders, and other subordinate agreements hereunder whenever appropriate to the goods or service to be provided under such agreements.

(b) *Prohibition on Abortion-related Activities.* (1) No funds made available under this Contract shall be used to finance, support, or be attributed to the following activities: (i) Procurement or distribution of equipment intended to be used for the purposes of inducing abortions as a method of family planning; (ii) special fees or incentives to women to coerce or motivate them to have abortions; (iii) payments to persons to perform abortions or to solicit persons to undergo abortions; (iv) information, education, training, or communication programs that seek to promote abortion as a method of family planning; (v) any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning (epidemiologic or descriptive research to assess the incidence, extent or consequences of abortion is not precluded); or (vi) lobbying for abortion.

(2) The Contractor shall insert the substance of this clause in any subgrants, subcontracts, purchase orders, and other subordinate agreements hereunder whenever appropriate to the goods or services to be provided under such agreements.

(c) *Voluntary Participation Requirements for Sterilization Programs.* (1) None of the funds made available under this contract shall be used to pay for the performance of involuntary sterilizations or to coerce or provide any financial incentive to any person to practice sterilizations.

(2) The Contractor shall insure that any surgical sterilization procedures supported in whole or in part by funds from the contract are performed only after the individual has voluntarily come to the treatment facility and has given an informed consent to the sterilization procedure. Informed consent means the voluntary knowing assent from the individual given after being advised of the surgical procedures to be followed, the attendant discomforts and risks, the benefits to be expected, the availability of alternative methods of family planning, the purpose of the operation and its irreversibility, and the fact that the consent can be withdrawn at any time prior to the operation. An individual's consent is considered voluntary if it is based upon the exercise of free choice and is not obtained by any special inducement or any element of force, fraud, deceit, duress or other forms of coercion or misrepresentation.

(3) Further, the Contractor shall document the patient's informed consent by: (i) A written consent document in a language the patient understands and speaks, which explains the basic elements of informed consent, as set out above, and which is signed by the individual and by the attending physician or by the authorized assistant of the attending physician; or (ii) when a patient is unable to read adequately a written certification signed by the attending physician or by the authorized assistant of the attending physician that the basic elements of informed consent above where orally presented to the patient, and that the patient thereafter consented to the performance of the operation. The receipt of the oral explanation shall be acknowledged by the patient's mark on the certification and by the signature or mark of a witness who shall be of the same sex and speak the same language as the patient.

(4) Copies of informed consent forms and certification documents for each voluntary sterilization (VS) procedure must be retained by the performing Contractor or subcontractor for a period of three years after the performance of the sterilization procedure.

(5) The Contractor shall insert the substance of this clause in any subgrants, subcontracts, purchase orders, and other subordinate agreements hereunder whenever appropriate to the goods and services to be provided under such agreements.

[43 FR 15627, Apr. 14, 1978, as amended at 47 FR 25965, June 16, 1982]

§ 7-7.5003-4 Cost accounting standards.

Insert the clause set forth in FPR 1-3.1204 under the conditions set forth therein.

[41 FR 4923, Feb. 3, 1976]

§ 7-7.5003-5 Privacy Act.

Insert the clause set forth in FPR 1-1.327-5(c) under the conditions set forth therein.

[42 FR 4842, Jan. 26, 1977]

§ 7-7.5003-6 Mandatory use of visa eligibility Form DSP 66A by participants.

If foreign students are to be brought to the United States for training, insert the clause set forth in AIDPR 7-7.5301-5.

[42 FR 28540, June 3, 1977; 42 FR 42689, Aug. 24, 1977, as amended at 47 FR 25966, June 16, 1982]

§ 7-7.5003-7 Local cost financing with U.S. dollars.

Insert the clause in §7-6.5104 under the conditions specified therein.

[45 FR 44286, July 1, 1980]

§ 7-7.5003-8 Protection of the individual as a research subject.

PROTECTION OF THE INDIVIDUAL AS A RESEARCH SUBJECT (OCTOBER 1979)

(a) Safeguarding the rights and welfare of human subjects involved in research supported by AID is the responsibility of the institution to which support is awarded. It is the policy of AID that no work shall be initiated under a grant, award, or contract for the support of research involving human subjects unless the research is given initial and continuing review and approval by an appropriate committee of the applicant institution. This review shall assure that: (1) The rights and welfare of the individuals involved are adquately protected, (2) the methods used to obtain informed consent are adequate and appropriate, and (3) the risks and potential medical benefits of the investigation are assessed.

(b) The institution must provide written assurance to AID that it will abide by this policy for all research involving human subjects supported by AID. This assurance shall consist of a written statement of compliance with the requirements regarding initial and continuing review of research involving human subjects and a description of the institution's review committee structure, its review procedures, and the facilities and personnel available to protect the health and safety of human subjects. In addition to providing the assurance, the institution must also certify to AID for each proposal involving human subjects that its committee has reviewed and approved the proposed research before any work may be initiated.

(c) Since the welfare of the subject is a matter of concern to AID as well as to the institution, AID advisory groups, consultants, and staff may independently review all research involving human subjects, and prohibit research which presents unacceptable hazards. This provision, however, shall not derogate in any manner from the responsibility of the institution set forth herein.

(d) All of the above provisions apply to any research involving human subjects conducted outside of the United States and, in addition, such overseas research will conform to legal and other requirements governing human research in the country where they are conducted.

(e) In addition to the procedures set forth above, studies with unmarketed drugs will be carried out in accordance with provisions applicable in the country where the study is conducted. In the United States, the regulations of the Food and Drug Administration will be followed and evidence of such compliance provided to AID.

(f) Guidance on procedures to safeguard human subjects involved in research is found in Title 45, Part 46, of the Code of Federal Regulations. Compliance with these procedures, except as modified above, is required.

[45 FR 44278, July 1, 1980]

§ 7-7.5003-9 Health and accident coverage for AID participant trainees.

HEALTH AND ACCIDENT COVERAGE FOR AID PARTICIPANT TRAINEES (MAY 1981)

(a) The Contractor shall enroll all non-U.S. participants (hereinafter referred to as "participants"), whose training in the U.S. is financed by AID under this Contract, in the Agency for International Development's Health and Accident Coverage (HAC) program.

(b) The Contractor shall, prior to the initiation of travel by each participant financed by AID under this Contract, fill out and mail to AID a self-addressed, postage prepaid, HAC enrollment card (AID form 1380-98). The Contractor can obtain a supply of these cards and instructions for completing them, from the Office of International Training, AID, Washington, D.C. 20523.

(c) The Contractor shall assure that enrollment shall begin immediately upon the participant's departure for the United States for the purpose of participating in a training program financed by AID and that enrollment shall continue in full force and effect until the participant returns to his/her country of origin, or is released from AID's responsibility, whichever is the sooner. The Contractor shall continue enrollment for participants whose departure is

delayed due to medical or other compelling reasons, with the written concurrence of the AID Project Manager and subject to the requirements of paragraph (d) of this section.

(d) The Contractor shall submit the HAC Program Participant Enrollment Card to AID, as specified in paragraph (b) of this section, to enable the participant(s), or the provider of medical services, to submit bills for medical costs resulting from illness and accident to the HAC Administrator, Trust Fund Administrators, Inc., 1030 15th Street, N.W., Suite 500, Washington, D.C. 20005. The HAC Administrator, not the Contractor, shall be responsible for paying all reasonable and necessary charges, not otherwise covered by student health service or other insurance programs (see paragragaphs (e) and (f)), subject to the availability of funds for such purposes, in accordance with the standards of coverage established by AID under the HAC program, and subject to the payment of the fee specified in paragraph (d)(1), of this section.

(1) Within thirty (30) days after enrollment, the Contractor shall send an enrollment fee computed on the basis of the fixed rate per participant per month* (the minimum period for calculation of fee is one month—that is, one participant month, 30 days, not one calendar month—premiums may not be prorated for fractional periods of less than 30 days), to: Agency for International Development, Office of Financial Management, Program Accounting Division, Non Project Assistance, Washington, D.C. 20523.

The enrollment fee should cover a minimum period of up to one year or the current training period for which funds are obligated under this Contract, whichever is less. As applicable, payments for additional periods of enrollment shall be made 30 days prior to the beginning of each new enrollment period or new period of funding of this Contract (the monthly enrollment fee for succeeding fiscal years may be obtained by calling the AID Office of International Training). All such fee payments shall be made by check, payable to the "Agency for International Development (HAC)." If payments are not made within 30 days, a late payment charge shall apply at a percentage rate based on the current value of funds to the Treasury for each 30 day period; the full charge shall also be applicable to periods of less than 30 days. The percentage rate will be calculated by the Treasury as an average of the current value of funds to the Treasury for a recent three month period and will be transmitted to AID in TFRM Bulletins.

The late payment charge shall be applied to any portion of the fees in arrears and be remitted together with the fees as a separately identified item on the covering memorandum.

(2) Whenever possible, fee payments for groups of several participants entering the HAC Program within the thirty-day reporting period shall be consolidated and covered by a single check. Participants covered by the fee payment shall be listed individually in a covering letter, identifying each participant (the name reported must be identical to that on the HAC enrollment card), showing period of enrollment (or period of coverage for which payment is remitted if this is different from the enrollment period), fee amount paid, Contract number, and U.S. Government appropriation number (as shown under the "Accounting and Appropriation Data" block of the Contract).

(e) The Contractor, to the extent that it is an educational institution with a student health service program, shall also enroll all participants in their institution's student health service program. Medical costs which are covered under the institution's student health service shall not be eligible for payment under AID's HAC program. The Contractor shall provide the HAC Administrator with a copy of information showing what medical costs are covered by the institution's student health service program; medical costs that are not covered by the institution's student health service program shall be submitted to the HAC Administrator.

(f) If the Contractor has a mandatory, non-waivable health and accident insurance program for students, the costs of such insurance will be allowable under this Contract. Any claims eligible under such insurance will not be payable under AID's HAC plan or under this Contract. Even thought the participant is covered by the Contractor's mandatory, non-waivable health and accident insurance program, the participant MUST be enrolled in AID's more comprehensive HAC program, *and* HAC payments MUST be made to AID as provided in above. In addition, a copy of the mandatory insurance policy must be forwarded to the HAC Administrator.

(g) Any payments for medical costs not covered by the Contractor's student health service program, or mandatory, non-waivable health and accident insurance program, or AID's HAC program shall be reimbursable under this Contract only with specific written approval of the Contracting Office and subject to the availability of funds.

(h) The HAC Administrator, for the period February 1, 1980 through January 31, 1983, is: Trust Fund Administrators, Inc., 1030 15th Street, N.W., Suite 500, Washington, D.C. 20005.

*The rate is $25 per participant-month for Fiscal Years 1980 and 1981.

[45 FR 44279, July 1, 1980, as amended at 46 FR 31889, June 18, 1981]

§ 7-7.5003-10 Women-owned business concerns subcontracting program.

Insert the clause entitled "Women-Owned Business Concerns Subcontracting Program (Over $500,000 or $1,000,000 for Construction of Any Public Facility)" specified in OFPP Policy Letter 80-4, as contained in Attachment A of FPR Temporary Regulation 54.

[45 FR 44279, July 1, 1980]

§ 7-7.5003-11 Participant training.

PARTICIPANT TRAINING (MAY 1982)

(a) *Definitions.* (1) Participant training is the training of any foreign national outside of his or her home country, using AID funds.

(2) A Participant is any foreign national being trained under this contract outside of his or her home country.

(b) *Applicable regulations.* Participant training is to be conducted according to the policies established in AID Handbook 10—Participant Training, except to the extent that specific exceptions to AID Handbook 10 have been provided in this contract. (Handbook 10 may be obtained by submitting a request to the Office of International Training, at the address specified in paragraph (c) of this section.)

(c) *Reporting requirement.* Once each month the Contractor shall submit three copies of AID Form 1380-9, Monthly Report of Participants Under Grant, Loan, or Contract Programs to the Office of International Training, AID, Washington, D.C. 20523.

[45 FR 55725, Aug. 21, 1980, as amended at 47 FR 25966, June 16, 1982]

§ 7-7.5003-12 Organizational conflicts of interest.

ORGANIZATIONAL CONFLICTS OF INTEREST (NOVEMBER 1980)

(a) The contractor warrants that, to the best of its knowledge and belief, and except as otherwise set forth in this contract, it does not have any organizational conflict of interest.

(1) The term "organizational conflict of interest" means that a relationship exists whereby an offeror or a contractor (including its chief executives, directors, proposed consultants or subcontractors) has interests which: (i) May diminish its capacity to give impartial, technically sound, objective assistance and advice or may otherwise result in a biased work product or, (ii) may result in an unfair competitive advantage. It does not include the "normal flow of benefits" from the performance of a contract.

(2) The term "contractor" means any person, firm unincorporated association, joint venture, partnership, corporation or affiliate thereof, which is a party to a contract with the United States of America. As used in this definition, the term "affiliate" has the same meaning as provided in FPR 1-1.601-1(e).

(b) The contractor agrees that, if after award it discovers an organizational conflict of interest with respect to this contract, it shall make an immediate and full disclosure in writing to the contracting officer which shall include a description of the action which the contractor has taken or proposes to take to avoid, eliminate or neutralize the conflict. The Government may, however, terminate the contract for the convenience of the Government if it would be in the best interest of the Government.

(c) The contractor agrees further that if the award follows a formally advertised solicitation and a conflict of interest was identified prior to award, it will adequately avoid, eliminate or neutralize the conflict in a manner satisfactory to the contracting officer.

(d) In the event that the contractor was aware of an organizational conflict of interest prior to the award of this contract and intentionally did not disclose the conflict to the Contracting Officer, the Government may terminate the contract at no cost to the Government.

[46 FR 10915, Feb. 5, 1981]

Subpart 7-7.53—Contracts for Participant Training

SOURCE: 35 FR 11393, July 16, 1970, unless otherwise noted.

§ 7-7.5300 Scope of subpart.

This subpart sets forth the contract clauses for use in contracts for participant training.

§ 7-7.5301 Required clauses.

The clauses set forth in this subpart shall be used in contracts for participant training (other than small purchases as defined in FPR Subpart 1-3.6).

§ 7-7.5301-1 Definitions.

DEFINITIONS

(a) "Administrator" shall mean the Administrator or the Deputy Administrator of the Agency for International Development.

(b) "AID" shall mean the Agency for International Development.

(c) "Catalog" shall mean any medium by which the Institution publicly announces terms and conditions for enrollment in the Institution, including tuition and fees to be charged. This includes "bulletin," "announcements," or any other similar word the Institution may use.

(d) "Contracting Officer" shall mean the person executing this contract on behalf of the U.S. Government and any other government employee who is a properly designated Contracting Officer; and the terms includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(e) "Cooperating Country or Countries" shall mean the foreign country or countries from which participants are selected.

(f) "Cooperating Government" shall mean the Government of the Cooperating Country.

(g) "Director" shall mean the individual who fills the AID position of Director, Office of International Training, or his authorized representative acting within the limits of his authority.

(h) "Economy class" air travel (also known as jet-economy, air coach, tourist-class, etc.) shall mean a class of air travel which is less than first class.

(i) "Employee" shall mean an employee of the Contractor assigned to work under this contract.

(j) "Federal Procurement Regulations" (FPR), when referred to herein shall include Agency for International Development Procurement Regulations (AIDPR).

(k) "Fees" shall mean those applicable charges directly related to enrollment in the Institution. This shall not include any permit charge (e.g., parking, vehicle registration), or charges for services of a personal nature (e.g., food, housing, laundry) unless specifically called for in this contract.

(l) "Government" shall mean the United States Government.

(m) "Institution" shall mean the educational institution providing services hereunder. The terms "Institution" and "Contractor" are synonymous.

(n) "Participants" shall mean nationals of the Cooperating Country brought to the United States or to Third Countries for training.

(o) "Traveler" shall mean the Institution's employees or other person designated by the Contracting Officer or Director, as appropriate, engaged in official travel in execution of his duties hereunder.

(p) "Tuition" shall mean the amount of money charged by an institution for instruction, not including fees as described in this section.

[35 FR 11393, July 16, 1970, as amended at 42 FR 4842, Jan. 26, 1977]

§ 7-7.5301-2 Travel and transportation.

TRAVEL AND TRANSPORTATION (OCTOBER 1970)

The Contractor shall be reimbursed for necessary and actual transportation costs and travel allowances of travelers in accordance with the established practice of the Contractor for travel within the United States directly referable to the Contract, provided they shall not exceed the rates and basis for computation of such rates as provided in the Federal Travel Regulations, as from time to time amended. Such transportation costs shall not be reimbursed in an amount greater than the cost of, and time required for, economy class commercial air travel scheduled by the most expeditious route unless economy travel or economy travel space are not available and the Contractor certifies to the facts in the voucher or other documents required to be submitted in accordance with the clause of this Contract entitled Method of Payment.

[45 FR 44279, July 1, 1980]

§ 7-7.5301-3 Changes in tuition and fees.

CHANGES IN TUITION AND FEES (OCTOBER 1970)

While educational programs for participants will be established utilizing the Contractor's currently applicable tuition and fee schedule, the parties understand that such standard tuition and fees may be subject to change during the course of the program. If such event results in an increase in the cost of the program, AID agrees to pay such increased standard tuition and fees in the next applicable academic term as a condition for the continuation of the program. If such change results in a decrease in the cost of the program, the Contractor agrees to charge to AID only the amount of such revised standard tuition and fees in the next applicable academic term. The Contractor shall undertake to keep AID currently advised as to changes in its standard tuition and fees. At such time as increases in the amounts of tuition and fees results in there being inadequate funds remaining in this contract to meet the costs of the next academic term, the Contractor will so advise AID. AID may then provide such additional funds as required to complete the program.

[45 FR 44279, July 1, 1980]

§ 7-7.5301-4 Conflict between contract and catalog.

CONFLICTS BETWEEN CONTRACT AND CATALOG (SEPTEMBER 1974)

In the event of any inconsistency between the provisions of this Contract and any catalog, or other document incorporated in this Contract by reference or otherwise or any of the Contractor's rules and regulations, the provisions of this Contract shall govern.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-5 Mandatory use of visa eligibility Form DSP 66A by participants.

MANDATORY USE OF VISA ELIGIBILITY FORM DSP 66A BY PARTICIPANTS (MAY 1977).

The Contractor shall insure that any foreign student brought to the United States for training under this contract uses Visa Eligibility Form DSP 66A (AID version) to obtain a visa.

[47 FR 25966, June 16, 1982]

§ 7-7.5301-6 Withdrawal of students.

WITHDRAWAL OF STUDENTS (SEPTEMBER 1974)

(a) The Government may, at its option and at any time, withdraw any student.

(b) The Contractor may request withdrawal by the Government of any student for academic or disciplinary reasons.

(c) If such withdrawal occurs prior to the end of a term, the Government shall pay any tuition and fees due for the current term in which the student may be enrolled, and the Contractor shall credit the Government with any charges eligible for refund under the Contractor's standard procedures for civilian students in effect on the effective date of such withdrawal.

(d) Withdrawal of students by the Government shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-7 Method of payment.

METHOD OF PAYMENT

Claims for reimbursement covering training, services and/or facilities provided by the Institution under this contract will be paid upon submission by the Institution to the Controller, AID of Voucher Form SF-1034 (original) and SF-1034(a) three copies, properly executed and supported by documentation which shall include the following:

(a) For training as provided under this contract: name of participant(s) and PIO number, title of training program, exact dates of training or enrollment period and amount claimed therefor.

(b) For services as provided under this contract: name, salary rate, period of service, statement of travel itinerary, travel and transportation costs and allowances and the amount (by item) claimed therefor. All transportation claims shall be accompanied by carrier's receipts or photostat copies thereof.

(c) For transportation provided under contract: All carrier claims shall be accompanied by receipts or other evidence of payment.

(d) For books and training aids as specified under this contract: number and date of applicable contract and Contractor's receipt appropriately detailed as to quantity, description and price.

(e) For all other services or items which may be specified under this contract: A list of such services or items, amount of such service or item and basis for reimbursement claimed therefor.

(f) A certificate signed by an authorized representative of the Institution as follows:

"The undersigned hereby certifies: (1) That payment of the sum claimed under the cited contract is proper and due and that appropriate refund to AID will be made promptly upon request of AID in the event

of nonperformance, in whole or in part, under the contract or for any breach of the terms of the contract, (2) that information on the fiscal report is correct and such detailed supporting information as AID may require will be furnished on request, and (3) that all services called for by the contract to the date of this certification have been met.

By _____
Title _____
Date _____"

(g) Where State law requires that the Institution retain all receipts or invoices the Institution may include a reference to such law and furnish, in lieu thereof, a detailed itemization of such receipts or invoices with payment indicated by the Institution's applicable check number.

§ 7-7.5301-8 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1-7.103-3.

[38 FR 28675, Oct. 16, 1973]

§ 7-7.5301-9 Audit.

Insert the clause set forth in FPR-1-3.814-2(a) under the conditions prescribed therein.

[39 FR 21132, June 19, 1974, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-7.5301-10 Inspection.

Insert the clause set forth in FPR 1-7.402-5(c).

[45 FR 44280, July 1, 1980]

§ 7-7.5301-11 Modification or amendment.

MODIFICATION OR AMENDMENT (NOVEMBER 1973)

No changes, modifications, or amendments shall be made to this Contract except as may be mutually agreed upon in writing by authorized representatives of the parties hereto.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-12 Material change in conditions.

MATERIAL CHANGE IN CONDITIONS (NOVEMBER 1973)

If the Contractor advises the Contracting Officer of a material change in the conditions which substantially interferes with or impedes the performance of this Contract in accordance with its terms or with sound professional standards, the parties will mutually consider appropriate action to be taken, which might include, but is not limited to, modification of the Contract or its termination in whole or in part pursuant to the clause of this Contract entitled "Termination." Failure of the parties to agree on the existence of such circumstances and consequent refusal of the Government to terminate after receipt of a written request to do so will be a dispute concerning a question of fact within the meaning of the general provision entitled "Disputes".

[45 FR 44280, July 1, 1980]

§ 7-7.5301-13 Termination.

TERMINATION (NOVEMBER 1973)

(a) Either party may terminate this Contract by giving thirty (30) days advance written notice of the effective date of termination. In the event of termination, the Government shall have the right, at its option, to continue to receive educational services for those students already enrolled in the Contractor's institution under this Contract until such time that the students complete their courses or curricula or the Government withdraws them from the Contractor's institution. The terms and conditions of this Contract in effect on the effective date of termination shall continue to apply to such students remaining in the Contractor's institution.

(b) Withdrawal of students pursuant to the clause of this contract entitled Withdrawal of Students shall not be considered a termination within the meaning of this provision.

(c) Termination by either party shall not be the basis for any special charge or claim by the Contractor other than as provided by the Contractor's standard procedures.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-14 Disputes.

Insert the clause set forth in FPR 1-7.102-12.

[45 FR 44280, July 1, 1980, as amended at 47 FR 25966, June 16, 1982]

§ 7-7.5301-15 Assignment of claims.

Insert the clause set forth in AIDPR 7-7.5001-11.

[37 FR 3820, Feb. 23, 1972]

§ 7-7.5301-16 Convict labor.

Insert the clause set forth in FPR 1-12.204.

[35 FR 11393, July 16, 1970, as amended at 40 FR 3449, Jan. 22, 1975]

§ 7-7.5301-17 Officials not to benefit.

Insert the clause set forth in FPR 1-7.102-17.

[35 FR 11393, July 16, 1970, as amended at 38 FR 28675, Oct. 16, 1973]

§ 7-7.5301-18 Covenant against contingent fees.

Insert the clause set forth in FPR 1-1.503.

§ 7-7.5301-19 Equal opportunity.

Insert the clause set forth in FPR 1-12.803-2.

[37 FR 3820, Feb. 23, 1972]

§ 7-7.5301-20 Utilization of labor surplus area concerns.

Insert the clause set forth in FPR 1-1.805-3(a).

[35 FR 11393, July 16, 1970, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-7.5301-21 Utilization of small business and small disadvantaged business concerns.

Insert the clause specified in paragraph A of OFPP Policy Letter 80-2, as contained in Attachment A of FPR Temporary Regulation 50, Supplement 2.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-22 Notice.

Insert the clause set forth in AIDPR 7-7.5001-39.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-23 Small business and small disadvantaged business subcontracting plan/incentive subcontracting program.

Insert the appropriate clause from paragraphs C, D, or E of OFPP Policy Letter 80-2, as contained in Attachment A of FPR Temporary Regulation 50, Supplement 2, under the conditions specified therein.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-24 Disabled veterans and veterans of the Vietnam era.

Insert the clause set forth in FPR Temporary Regulation 39.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-25 [Reserved]

§ 7-7.5301-26 Employment of the handicapped.

Insert the clause set forth in FPR Temporary Regulation 38.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-27 Use of government facilities and personnel.

Insert the clause set forth in AIDPR 7-7.5001-45.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-28 Health and accident coverage for AID participant trainees.

Insert the clause set forth in AIDPR 7-7.5003-9.

[45 FR 44280, July 1, 1980]

§ 7-7.5301-29 Utilization of women-owned business concerns.

Insert the clause entitled "Utilization of Women-Owned Business Concerns (Over $10,000)" as specified in OFPP Policy Letter 80-4, as contained in Attachment A of FPR Temporary Regulation 54.

[45 FR 44281, July 1, 1980]

§ 7-7.5301-30 Participant training.

Insert the clause set forth in AIDPR 7-7.5003-11.

[45 FR 55726, Aug. 21, 1980]

§ 7-7.5302 Clauses to be used when applicable.

[37 FR 3820, Feb. 23, 1972]

§ 7-7.5302-1 Alterations in contract.

Insert the clause set forth in AIDPR 7-7.5003-1.

[37 FR 3820, Feb. 23, 1972]

§ 7-7.5302-2 Family planning and population assistance activities.

Insert the clause set forth in AIDPR 7-7.5003-3 under the conditions contained therein.

[40 FR 16206, Apr. 10, 1975, as amended at 43 FR 15628, Apr. 14, 1978]

§ 7-7.5302-3 Privacy Act.

Insert the clause set forth in FPR 1-1.327-5(c) under the conditions set forth therein.

[42 FR 4842, Jan. 26, 1977]

§ 7-7.5302-4 Women-owned business concerns subcontracting program.

Insert the clause entitled "Women-Owned Business Concerns Subcontracting Program (Over $500,000 or $1,000,000 for Construction of Any Public Facility)' specified in OFPP Policy Letter 80-4, as contained in Attachment A of FPR Temporary Regulation 54.

[45 FR 44281, July 1, 1980]

Subpart 7-7.54—Clauses for Fixed Price Contracts for Technical Services

SOURCE: 37 FR 3820, Feb. 23, 1972, unless otherwise noted.

§ 7-7.5400 Scope of subpart.

This subpart sets forth contract clauses for use in fixed price technical service contracts with a contractor other than an educational institution.

§ 7-7.5401 Required clauses.

These clauses are mandatory for fixed price type contracts for technical service and, with necessary modifications, other types of fixed price contracts.

§ 7-7.5401-1 Definitions.

DEFINITIONS (DECEMBER 1970)

(a) "AID" shall mean the Agency for International Development.

(b) "Administrator" shall mean the Administrator or the Deputy Administrator of the Agency for International Development.

(c) "Consultant" shall mean any especially well qualified person who is engaged on a temporary or intermittent basis to advise the Contractor and who is not an officer or employee of the Contractor who performs other duties for the Contractor.

(d) "Contracting Officer" shall mean the person executing this contract on behalf of the United States Government and any other government employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(e) "Contractor Employee" shall mean an employee of the Contractor assigned to work under the contract.

(f) "Cooperating Country or Countries" shall mean the foreign country or countries in which services are to be rendered hereunder.

(g) "Cooperating Government" shall mean the government of the Cooperating Country.

(h) "Federal Procurement Regulations" (FPR) when referred to herein, shall include the Agency for International Development Procurement Regulations (AIDPR).

(i) "Government" shall mean the United States Government.

(j) "Mission" shall mean the United States AID Mission to, or principal AID office in, the Cooperating Country.

(k) "Mission Director" shall mean the principal officer in the Mission in the Cooperating Country, or his designated representative.

(l) "Scope of Work" shall mean specifications.

(m) Except as otherwise provided in this contract, the term "subcontract" includes purchase orders under this contract.

(n) "Work Statement" shall mean specifications.

§ 7-7.5401-2 Biographical data.

Insert the clause set forth in AIDPR 7-7.5001-3.

§ 7-7.5401-3 Changes.

Insert the clause set forth in FPR 1-7.304-1, and the following additional paragraph:

If this contract is issued by an AID/Washington Contracting Officer, valid change orders may be issued only by the AID/Washington Contracting Officer, or such other person as he or she may designate in writing for such purpose.

[45 FR 55726, Aug. 21, 1980]

§ 7-7.5401-4 Inspection.

Insert the clause set forth in FPR 1-7.302-4(b).

[45 FR 44281, July 1, 1980]

§ 7-7.5401-5 Documentation for payment.

DOCUMENTATION FOR PAYMENT

(MARCH 1979)

(a) Claims for payment of the fixed amount (U.S. Dollars only) due under the

contract shall be submitted to the paying office indicated on the cover page of the contract. These claims shall be submitted on Voucher Form SF-1034 (original) and SF-1034a (three copies). Each claim shall specify the contract number and be properly executed, and shall be accompanied by:

(1) An invoice (original and two (2) copies) indicating the period for which compensation is claimed, the paragraph of the contract under which payment is requested and, when appropriate, a fully itemized statement of costs;

(2) A vendor's invoice for each item of non-expendable property purchased showing the quantity, description and price for each item. (Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500. This definition applies only to personal property purchased by the contractor or delivered directly to the contractor from the vendor. Personal property issued to the contractor in the host country by the mission accountable officer and listed as non-expendable is reportable to the mission accountable officer regardless of its value.); and

(3) Such other supporting documentation and justification as the contracting officer may prescribe.

(b) The invoice required in paragraph (a)(1) of this section shall include a certification signed by an authorized representative of the contractor as follows:

The undersigned hereby certifies: (1) That payment of the sum claimed under the cited contract is proper and due and that appropriate refund to AID will be made promptly upon request of AID in the event of nonperformance, in whole or in part, under the contact or for any breach of the terms of the contract, (2) that information on the invoice is correct and such detailed supporting information as AID may require will be furnished by the contractor's home office or base office as appropriate promptly to AID on request and (3) that all requirements called for by the contract to the date of this certification have been met.

By _____
Title _____
Date _____

(c) A final voucher shall be submitted by the contractor promptly following completion of the work under the contract but in no event later than 180 days (or such longer period as the contracting officer may in his or her discretion approve in writing) from the date of such completion. Contractor's claim, which includes final settlement of compensation, shall not be submitted until after receipt and written approval by AID of the final report required by this contract. Upon receipt and approval of the voucher designated by the contractor as the "final voucher" submitted on Form SF 1034 (original) and SF 1034a (three copies), the Government shall promptly pay to the contractor any amounts withheld and not previously paid to the contractor: *Provided, however,* That the contractor shall furnish a release, in such form and with such exceptions as may be approved by the contracting officer, discharging the Government of the United States, its officers, agents and employees from all liabilities, obligations, and claims arising out of or under this contract; accompanied by a satisfactory accounting of all Government owned property, if any, for which the contractor has custodial responsibility hereunder.

[44 FR 39163, July 5, 1979]

§ 7-7.5401-6 Approvals.

APPROVALS (DECEMBER 1970)

All approvals required to be given under the contract by the Contracting Officer or the Mission Director shall be in writing and, except when extraordinary circumstances make it impracticable, shall be requested by the Contractor sufficiently in advance of the contemplated action to permit approval, disapproval or other disposition prior to that action.

§ 7-7.5401-7 Source and nationality requirements for procurement of goods and services.

Insert the clause set forth in § 7-6.5103.

[45 FR 44286, July 1, 1980]

§ 7-7.5401-8 Reports.

Insert the clause set forth in AIDPR 7-7.5501-13 (41 CFR 7-7.5501-13), removing paragraph (a)(2).

[47 FR 13145, Mar. 29, 1982]

§ 7-7.5401-9 Assignment of claims.

Insert the clause set forth in AIDPR 7-7.5001-11.

§ 7-7.5401-10 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1-7.103-3.

[38 FR 28675, Oct. 16, 1973]

§ 7-7.5401-11 Default.

Insert the clause set forth in FPR 1-8.710.

§ 7-7.5401-12 Disputes.

Insert the clause set forth in FPR 1-7.102-12.

[45 FR 44281, July 1, 1980, as amended at 47 FR 25966, June 16, 1982]

§ 7-7.5401-13 Convict labor.

Insert the clause set forth in FPR 1-12.204.

[37 FR 3820, Feb. 23, 1972, as amended at 40 FR 3449, Jan. 22, 1975]

§ 7-7.5401-14 Standards of work.

Insert the clause set forth in AIDPR 7-7.5001-6.

§ 7-7.5401-15 Equal opportunity.

Insert the clause set forth in FPR 1-12.803-2.

§ 7-7.5401-16 Officials not to benefit.

Insert the clause set forth in AIDPR 7-7.102-17.

[37 FR 3820, Feb. 23, 1972, as amended at 38 FR 28675, Oct. 16, 1973; 45 FR 44281, July 1, 1980]

§ 7-7.5401-17 Covenant against contingent fees.

Insert the clause set forth in FPR 1-1.503.

§ 7-7.5401-18 Release of information.

Insert the clause set forth in AIDPR 7-7.5001-31.

§ 7-7.5401-19 Utilization of small business and small disadvantaged busines concerns.

Insert the clause specified in paragraph A of OFPP Policy Letter 80-2, as contained in Attachment A of FPR Temporary Regulation 50, Supplement 2, and the paragraph (e) specified in AIDPR 7-7.5001-20.

[45 FR 44281, July 1, 1980]

§ 7-7.5401-20 Utilization of concerns in labor surplus areas.

Insert the clause set forth in FPR 1-1.805-3(a).

§ 7-7.5401-21 Rights in data.

Insert the clause set forth in AIDPR 7-7.5001-30.

§ 7-7.5401-22 Language, weights, and measures.

Insert the clause set forth in AIDPR 7-7.5001-37.

§ 7-7.5401-23 Government property.

(a) Insert the clause set forth in FPR 1-7.303-7 (a), (b), (c), or (d), as appropriate.

(b) The following preface is to be used with the FPR clause:

("Government property" or "Government furnished property" as used in the following clause, means non-expendable property owned by or leased to the U.S. Government and furnished to the contractor, or non-expendable property acquired by the contractor under the contract and titled to the U.S. Government. Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit value of more than $500. This definition applies only to personal property purchased by the contractor or delivered directly to the contractor from the vendor. Personal property issued to the contractor in the host country by the mission accountable officer and listed as non-expendable is reportable to the mission accountable officer regardless of its value.)

(c) The following final paragraph is to be added to the FPR clause specified above:

REPORTING REQUIREMENTS

The contractor will submit an annual report on all non-expendable property in a form and manner acceptable to AID substantially as follows:

ANNUAL REPORT OF AID OWNED NONEXPENDABLE PROPERTY IN CONTRACTOR'S CUSTODY

(Name of Contractor)

As of (End of Contract Year), 19xx

	Motor vehicles	Furniture and furnishings		Other nonexpendable property
		Office	Living quarters	
A Value of property as of last report				
B Transactions during this reporting period				
1 Acquisitons (add)				
a Purchased by contractor				
b Transferred from AID				
c Transferred from others—Without reimbursement [1]				
2 Disposals (deduct)				
a Returned to AID				
b Transferred to AID—Contractor Purchased				
c Transferred to other Government agencies [1]				
d Other Disposals [1]				
C Value of property as of reporting date				
D Estimated average age of contractor held property				
	Years	Years	Years	Years

[1] Explain if transactions were not processed through or otherwise authorized by AID.

Property Inventory Verifications

I attest that (1) physical inventories of AID owned nonexpendable property are taken not less frequently than annually; (2) the accountability records maintained for AID owned property in our possession are in agreement with such inventories; and (3) the total of the detailed accountability records maintained agrees with the property value shown opposite line C above, and the estimated average age of each category of property is as cited opposite line D above.

_____

Authorized Signature

[44 FR 39163, July 5, 1979]

§ 7-7.5401-24 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in FPR 1-7.103-4 and the paragraph (c) set forth in AIDPR 7-7.5001-28.

[37 FR 3820, Feb. 23, 1972, as amended at 38 FR 28675, Oct. 16, 1973]

§ 7-7.5401-25 Gratuities.

GRATUITIES (DECEMBER 1970)

(a) The Government may, by written notice to the Contractor, terminate the right of the Contractor to proceed under this contract if it is found, after notice and hearing, by the Administrator or his duly authorized representative, that gratuities (in the form of entertainment, gifts, or otherwise) were offered or given by the Contractor, or any agent or representative of the Contractor, to any officer or employee of the Government with a view toward securing a contract or securing favorable treatment with respect to the awarding or amending, or the making of any determinations with respect to the performing of such contract; provided, that the existence of the facts upon which the Administrator or his duly authorized representative makes such findings shall be in issue and may be reviewed in any competent court.

(b) In the event this contract is terminated as provided in paragraph (a) hereof, the Government shall be entitled (i) to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor, and (ii) as a penalty in addition to any other damages to which it may be entitled by law, to exemplary damages in an amount (as determined by the Administrator or his duly authorized representative) which shall be not less than three nor more than ten times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

(c) The right and remedies of the Government provided in this clause shall not be ex-

BEST DOCUMENT AVAILABLE

clusive and are in addition to any other rights and remedies provided by law or under this contract.

§ 7-7.5401-26 Security requirements.

Insert the clause set forth in AIDPR 7-7.5001-38.

§ 7-7.5401-27 Notices.

Insert the clause set forth in AIDPR 7-7.5001-39.

§ 7-7.5401-28 Authorization and consent.

Insert the clause set forth in AIDPR 7-7.5001-27.

§ 7-7.5401-29 Patent rights.

Insert the appropriate clause set forth in FPR 1-9.107-5 or 1-9.107-6, under the conditions stated in FPR 1-9.107-4.

[41 FR 4923, Feb. 3, 1976]

§ 7-7.5401-30 Small business and small disadvantaged business subcontracting plan/incentive subcontracting program.

Insert the appropriate clause from paragraphs C, D, or E of OFPP Policy Letter 80-2, as contained in Attachment A of FPR Temporary Regulation 50, Supplement 2, under the conditions specified therein.

[45 FR 44281, July 1, 1980]

§ 7-7.5401-31 Disabled veterans and veterans of the Vietnam era.

Insert the clause set forth in FPR Temporary Regulation 39.

[45 FR 44281, July 1, 1980]

§ 7-7.5401-32 [Reserved]

§ 7-7.5401-33 Pricing of Adjustments.

Insert the clause set forth in FPR 1-7.102-20.

[38 FR 28675, Oct. 16, 1973]

§ 7-7.5401-34 Employment of the handicapped.

Insert the clause set forth in FPR Temporary Regulation 38.

[45 FR 44281, July 1, 1980; 45 FR 48888, July 22, 1980]

§ 7-7.5401-35 Termination for convenience of the Government.

Insert the appropriate clause in accordance with FPR 1-8.700-2(a) (1), (2), or (4).

[42 FR 4842, Jan. 26, 1977]

§ 7-7.5401-36 Clean air and water.

Insert the clause set forth in FPR 1-1.2302-2 under the conditions set forth therein.

[42 FR 4842, Jan. 26, 1977]

§ 7-7.5401-37 Use of government facilities and personnel.

Insert the clause set forth in AIDPR 7-7.5001-45.

[45 FR 44281, July 1, 1980]

§ 7-7.5401-38 Utilization of women-owned business concerns.

Insert the clause entitled "Utilization of Women-Owned Business Concerns (Over $10,000)" as specified in OFPP Policy Letter 80-4, as contained in Attachment A of FPR Temporary Regulation 54.

[45 FR 44281, July 1, 1980]

§ 7-7.5402 Additional clauses.

These additional clauses are mandatory for fixed price type contracts for technical services and, with necessary modifications for other types of fixed price contracts, which will be performed in whole or in part outside the United States. (These clauses are in addition to the clauses set forth in § 7-7.5401.)

§ 7-7.5402-1 Definitions.

(a) "Dependents" shall mean:

(1) Spouse;

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self support;

(3) Parents (including step and legally adoptive parents), of the employee or of the spouse, when such parents are at least 51 percent dependent on the employee for support; and

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the employee, or of the spouse, when

such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried and under 21 years of age, or regardless of age, are incapable of self support.

(b) "Local Currency" shall mean the currency of the Cooperating Country.

(c) "Regular Employee" shall mean a Contractor employee appointed to serve one year or more in the Cooperating Country.

(d) "Short Term Employee" shall mean a Contractor employee appointed to serve less than one year in the Cooperating Country.

(e) "Traveler" shall mean the Contractor's Regular Employees, Dependents of the Contractor's Regular Employees, the Contractor's Short Term Employees, Consultants and, as authorized by the Contracting Officer, the Contractor's Officers and Executives, or other persons.

§ 7-7.5402-2 Personnel.

PERSONNEL (SEPTEMBER 1981)

(a) *Cooperating country clearance.* The Contractor shall not send any individual outside the United States to perform work under the Contract without first obtaining written notification from the Contracting Officer of country clearance for the employee.

(b) *Individuals engaged or assigned when outside the United States.* No individual shall be engaged or assigned when outside the United States to perform work outside the United States unless authorized in the Schedule or otherwise approved by the Contracting Officer or Mission Director.

(c) *Physical fitness of employees.* Contractor shall exercise reasonable precautions in assigning employees for work under this contract in the Cooperating Country to assure that such employees are physically fit for work and residence in the Cooperating Country. In carrying out this responsibility Contractor shall require all such employees (other than those hired in the Cooperating Country) to be examined by a licensed doctor of medicine. Contractor shall require the doctor to certify that, in the doctor's opinion, the employee is physically qualified to engage in the type of activity for which he is employed and the employee is physically qualified to reside in the country to which he is assigned for duty. The employee's Medical Certification shall be retained by the Contractor and made available to AID if so required.

(d) *Conformity to laws and regulations of Cooperating Country.* Contractor agrees to use its best efforts to assure that its personnel, while in the Cooperating Country, will abide by all applicable laws and regulations of the Cooperating Country and political subdivisions thereof.

(e) *Sale of personal property or automobiles.* To the extent permitted by Cooperating Country laws, the importation and sale of personal property or automobiles by Contractor employees and their dependents in the Cooperating Country shall be subject to the same limitations and prohibitions which apply to U.S. nationals employed by the Mission. This provision does not apply to employees or consultants who are citizens or legal residents of the cooperating country.

(f) *Conflict of interest.* Other than work to be performed under this contract for which an employee or consultant is assigned by the Contractor, no such employee or consultant of the Contractor shall engage, directly or indirectly, either in his own name or in the name or through the agency of another person, in any business, profession or occupation in the Cooperating Country or other foreign countries to which he is assigned, nor shall he make loans or investments to or in any business, profession or occupation in the Cooperating Country or other foreign countries to which he is assigned. This provision does not apply to employees or consultants who are citizens or legal residents of the cooperating country.

(g) *Right to recall.* On the written request of the Contracting Officer or of a cognizant Mission Director, the Contractor will terminate the assignment of any individual to any work under the contract and, as requested, will use its best efforts to cause the return to the United States of the individual from overseas or his departure from a foreign country or a particular foreign locale. Termination of each employee and placement of a substitute employee shall be at no cost to AID.

[37 FR 3820, Feb. 23, 1972, as amended at 46 FR 51916, Oct. 23, 1981]

§ 7-7.5402-3 Conversion of U.S. dollars to local currency.

Insert the clause set forth in AIDPR 7-7.5002-8.

§ 7-7.5402-4 Post privileges.

Insert the clause set forth in AIDPR 7-7.5502-7.

[38 FR 28675, Oct. 16, 1973, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-7.5402-5 Contractor—mission relationships.

Insert the clause set forth in AIDPR 7-7.5002-13.

§ 7-7.5402-6 Marking.

Insert the clause set forth in AIDPR 7-7.5002-5.

§ 7-7.5402-7 Insurance—workmen's compensation, private automobiles.

INSURANCE—WORKMEN'S COMPENSATION, PRIVATE AUTOMOBILES (DECEMBER 1977)

(a) *Workmen's compensation insurance.* (Insert paragraphs (1) through (4) of the clause set forth in AIDPR 7-10.402(a).)

(b) *Insurance on private automobiles.* If the Contractor or any of its employees or their dependents transport or cause to be transported (whether or not at contract expense) privately owned automobiles to the Cooperating Country, or they or any of them purchase an automobile within the Cooperating County the Contractor agrees to make certain that all such automobiles during such ownership within the Cooperating Country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director payable in United States dollars or its equivalent in the currency of the Cooperating Country: injury to persons, $10,000/$20,000; property damage, $5,000. The Contractor further agrees to deliver or cause to be delivered to the Mission Director or such other official as designated by the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobiles are operated within the Cooperating Country.

[37 FR 3820, Feb. 23, 1972, as amended at 43 FR 15628, Apr. 14, 1978]

§ 7-7.5402-8 Use of pouch facilities.

Insert the clause set forth in AIDPR 7-7.5002-17.

[46 FR 10915, Feb. 5, 1981]

§ 7-7.5402-9 International travel approval and notification requirements.

Prior written approval by the contracting officer is required for all international travel directly and identifiably funded by AID under this contract. The Contractor shall therefore present to the contracting officer an itinerary for each planned international trip, showing the name of the traveler, purpose of the trip, origin/destination (and intervening stops), and dates of travel, as far in advance of the proposed travel as possible, but in no event less than three weeks before travel is planned to commence. The contracting officer's prior written approval may be in the form of a letter or telegram or similar device, or may be specifically incorporated into the Schedule of the Contract. At least one week prior to commencement of approved international travel, the Contractor shall notify the cognizant Mission, with a copy to the contracting officer, of planned travel, identifying the travellers and the dates and times of arrival.

[39 FR 38646, Nov. 1, 1974]

§ 7-7.5402-10 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1-1.323-2.

[42 FR 4843, Jan. 26, 1977]

§ 7-7.5402-11 Title to and care of property.

Insert the clause set forth in AIDPR 7-7.5002-4.

[44 FR 39164, July 5, 1979]

§ 7-7.5403 Clauses to be used when applicable.

§ 7-7.5403-1 Alterations in contract.

Insert the clause set forth in AIDPR 7-7.5003-1.

§ 7-7.5403-2 Organizational conflicts of interest.

Insert the clause set forth in AIDPR 7-7.5003-12.

[46 FR 10915, Feb. 5, 1981]

§ 7-7.5403-3 Price reduction for defective cost or pricing data.

In accordance with the provisions of FPR 1-3.814 insert the appropriate clause set forth in FPR 1-3.814-1(a).

§ 7-7.5403-4 Family planning and population assistance activities.

Insert the clause set forth in AIDPR 7-7.5003-3 under the conditions contained therein.

[40 FR 16206, Apr. 10, 1975, as amended at 43 FR 15628, Apr. 14, 1978]

§ 7-7.5103-5 Cost accounting standards.

Insert the clause set forth in FPR 1-3.1204 under the conditions set forth therein.

[41 FR 4923, Feb. 3, 1976]

§ 7-7.5103-6 Privacy Act.

Insert the clause set forth in FPR 1-1.327-5(c) under the conditions set forth therein.

[42 FR 4843, Jan. 26, 1977]

§ 7-7.5103-7 Mandatory use of visa eligibility Form DSP 66A by participants.

If foreign students are to be brought to the United States for training, insert the clause set forth in AIDPR 7-7.5301-5.

[42 FR 28541, June 3, 1977, as amended at 45 FR 44281, July 1, 1980; 47 FR 25966, June 16, 1982]

§ 7-7.5103-8 Protection of the individual as a research subject.

Insert the clause set forth in AIDPR 7-7.5003-8.

[45 FR 44281, July 1, 1980]

§ 7-7.5103-9 Local cost financing with U.S. dollars.

Insert the clause § 7-6.5104 under the conditions specified herein.

[45 FR 44287, July 1, 1980]

§ 7-7.5103-10 Health and accident coverage for AID participant trainees.

Insert the clause set forth in AIDPR 7-7.5003-9.

[45 FR 44281, July 1, 1980]

§ 7-7.5103-11 Women-owned business concerns subcontracting program.

Insert the clause entitled "Women-Owned Business Concerns Subcontracting Program (Over $500,000 or $1,000,000 for Construction of any Public Facility)" specified in OFPP Policy Letter 80-4, as contained in Attachment A of FPR Temporary Regulation 54.

[45 FR 44281, July 1, 1980]

§7-7.5103-12 Participant training.

Insert the clause set forth in AIDPR 7-7.5003-11.

[45 FR 55726, Aug. 21, 1980]

Subpart 7-7.55 Clauses for Cost Reimbursement Contracts With Educational Institutions

AUTHORITY: Sec. 621, 72 Stat. 445, as amended; 22 U.S.C. 2381; E.O. 10973, Nov. 3, 1961, 26 FR 10469; 3 CFR 1959-63 Comp.

SOURCE: 38 FR 15602, June 14, 1973, unless otherwise noted.

§ 7-7.5500 Scope of subpart.

This subpart sets forth clauses for use in cost reimbursement contracts with educational institutions. For clauses to be used in cost reimbursement contracts with commercial organizations or nonprofit organizations other than educational institutions, see Subpart 7-7.50 of this part.

[46 FR 31889, June 18, 1981]

§ 7-7.5501-1 Definitions.

DEFINITIONS (JANUARY 1975)

(a) "Administrator" shall mean the Administrator or the Deputy Administrator of the Agency for International Development.

(b) "AID" shall mean the Agency for International Development.

(c) "Campus coordinator" shall mean the representative of the contractor at the contractor's home institution, who shall be responsible for coordinating the activities carried out under the contract.

(d) "Consultant" shall mean any especially well-qualified person who is engaged on a temporary or intermittent basis and who is not an officer or employee of the contractor.

(e) "Contracting Officer" shall mean the person executing this contract on behalf of the U.S. Government and any other Government employee who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(f) "Contractor" shall mean the educational institution providing services hereunder.

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(g) "Contractor employee" shall mean an employee of the contractor assigned to work under this contract.

(h) "Economy class" air travel (also known as jet-economy, aircoach, tourist- class, etc.) shall mean a class of air travel which is less than first class.

(i) "Federal Procurement Regulations (FPR)," when referred to herein, shall include AID Procurement Regulations (AIDPR).

(j) "Government" shall mean the U.S. Government.

[38 FR 15602, June 14, 1973, as amended at 40 FR 3449, Jan. 22, 1975]

§ 7-7.5501-2 Approvals.

APPROVALS (JUNE 1973)

All approvals made under the contract by the Contracting Officer, or Mission Director, shall be in writing and obtained by the contractor in advance of the contemplated action. If, because of existing conditions, it is impossible to obtain prior written approval, the approving official may, at his discretion, ratify the action after the fact.

§ 7-7.5501-3 Biographical data.

BIOGRAPHICAL DATA (JUNE 1973)

(a) The contractor agrees to furnish to the Contracting Officer the biographical information requested on AID Form 1420-17, Contractor Employee Biographical Data Sheet for: (1) All contractor employees to be sent outside the United States, and (2) the campus coordinator. Biographical data on other personnel employed under this contract shall be available for review by AID at the contractor's home institution.

§ 7-7.5501-4 [Reserved]

§ 7-7.5501-5 Personnel compensation.

PERSONNEL COMPENSATION (DECEMBER 1981)

Direct compensation of personnel will be reimbursable in accordance with the Contractor's established policies, procedures and practices except as otherwise provided in paragraphs (a) through (d) of this section, and the General Provisions clause entitled "Allowable Cost and Payment". Such Contractor policies, procedures and practices shall be the same as used in contracts and grants with other Government agencies and accepted by the cognizant U.S. Government agency assigned primary audit responsibility for the Contractor, shall be in writing and shall be made available to the Contracting Officer, or his designated representative, upon request:

(a) *Compensation.* (1) Compensation (i.e., the employee's base annual salary plus overseas recruitment incentive, if any) which exceeds the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1 as set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended, will be reimbursed only with the approval of the Contracting Officer.

(2) The employee's base annual salary under this Contract includes annual or annualized salary plus related professional income, calculated in accordance with the following:

(i) If the employee is already working under a 12 month appointment, this is his annual salary to which related professional income is added.

(ii) If the employee is working under an academic year appointment (e.g., 9 or 10 months), his salary is annualized in accordance with the following:

(A) The policy and practice established by the Contractor for his on-campus employees, as accepted by the cognizant U.S. Government agency assigned primary audit responsibility for the contract, to which is added other related income from professional employment, excluding business or other activities not connected with the employee's profession, which was earned during the preceding academic year; or

(B) The addition to his academic year salary of related professional income earned during the preceding year.

(b) *Compensation during travel.* Compensation paid while in travel status will not be reimbursed for a travel period greater than the time required for travel by the most direct and expeditious air route except as otherwise provided under the General Provisions clause entitled "Travel Expenses".

(c) *Consultants.* Unless approved by the Contracting Officer or authorized in the Schedule of the contract, no compensation for consultants will be reimbursed.

(d) *Work week.* The work week for Contractor employees working in the U.S. shall not be less than the established on-campus practice of the Contractor.

[39 FR 25488, July 11, 1974, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-7.5501-6 Leave and holidays.

LEAVE AND HOLIDAYS (JUNE 1973)

(a) *Vacation leave.* (1) The contractor may grant to his employees working in the United States under this contract, vacations of reasonable duration, but not to exceed the contractor's on-campus policy and practice for his employees.

(2) Reimbursement to the contractor for vacation leave is limited to the amount earned by the employees while serving under this contract.

(b) *Sick leave.* The contractor may grant to contractor employees working in the United States, sick leave at a rate not exceeding his usual on-campus practice. However, reimbursement for sick leave taken under this contract is limited to the amount earned by the employee while serving under this contract.

(c) *Military leave.* Military leave of not more than 15 calendar days in any calendar year may be granted in accordance with the contractor's usual on- campus practice to each regular employee who is a reservist of the Armed Forces, provided that such military leave has been approved in advance by the Mission Director or the Contracting Officer.

(d) *Leave records.* The contractor shall maintain current leave records for all contractor employees and make them available, as requested by the Mission Director or the Contracting Officer.

(e) *Holidays.* While serving in the United States, contractor employees shall be entitled to holidays in accordance with the contractor's established on-campus policy and practice.

§ 7-7.5501-7 Travel expenses.

TRAVEL EXPENSES (MARCH 1979)

(a) The contractor shall be reimbursed for actual travel costs and travel allowances for travel in the United States in accordance with the established on-campus practice of the contractor. Travel costs shall not be reimbursed in any amount greater than the cost of, and time required for, economy class commercial scheduled air travel by the most expeditious route except as otherwise provided in paragraph (b) of this section, unless economy air travel or economy air travel space are not available and the contractor supports this in the voucher or other documents retained as part of his contract records.

(b) The contractor may grant under this contract reasonable delays en route, not circuitous in nature, while in travel status, caused by events beyond the control of such traveler or contractor. It is understood that if delay is caused by physical incapacitation, personnel shall be eligible for such sick leave as is provided under paragraph (b) of the clause of this contract entitled "Leave and Holidays".

§ 7-7.5501-8 Allowable cost and payment.

ALLOWABLE COST AND PAYMENT (MAY 1981)

(a) For the performance of this contract, the Government shall pay to the Contractor the cost thereof (hereinafter referred to as "allowable cost") determined by the Contracting Officer to be allowable in accordance with:

(1) Subpart 1-15.3 of the Federal Procurement Regulations, "Contracts with Educational Institutions" as in effect on the date of this contract, and

(2) The terms of this contract.

(b) Dollar payment:

(1) At least once each quarter the Contractor shall submit to the paying office indicated on the Cover Page, a Voucher Form SF-1034 (original) and SF-1034(a) in three copies. Each voucher shall be identified by the appropriate AID contract number, properly executed, in the amount of dollar expenditures made during the period

covered. The voucher forms shall be supported by:

(i) Original and three copies of a certified fiscal report rendered by the contractor in a form and manner satisfactory to AID substantially as follows:

TOTAL EXPENDITURES

Category	Budget amount	To date	This period (indicate dates)
Salaries and wages:			
Home office	$XXX	$XXX	$XXX
Field office	XXX	XXX	XXX
Indirect costs:			
Home office	XXX	XXX	XXX
Field office	XXX	XXX	XXX
Consultant fees	XXX	XXX	XXX
Allowances	XXX	XXX	XXX
Travel and transportation	XXX	XXX	XXX
Expendable equipment and materials	XXX	XXX	XXX
Non-expendable property	XXX	XXX	XXX
Participant costs	XXX	XXX	XXX
Other direct costs	XXX	XXX	XXX
Grand total	$XXX	$XXX	$XXX

(ii) The fiscal report shall include a certification signed by an authorized representative of the Contractor as follows:

The undersigned hereby certifies: (A) That payment of the sum claimed under the cited contract is proper and due and that appropriate refund to AID will be made promptly upon request in the event of disallowance of costs not reimbursable under the terms of the contract, and (B) that information on the fiscal report is correct and such detailed supporting information as AID may reasonably require will be furnished promptly to AID on request at the Contractor's home office or base office as appropriate.

By ----------
Title ----------
Date ----------

(iii) Unless otherwise provided in the contract, the contractor shall submit a vendor's invoice detailing the quantity, description, and price for each individual item purchased, as follows:

(A) Expendable equipment, supplies, or commodities—for transactions totaling more than $2,500.

(B) Non-expendable property—for every purchase. Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has a unit cost of more than $500. This definition applies only to personal property purchased by the contractor or delivered directly to the contractor from the vendor. Personal property issued to the contractor in the host country by the mission accountable officer and listed as non-expendable is reportable to the mission accountable officer regardless of its value.

(iv) The bill of lading or airway bill as evidence of shipment by U.S.-flag carrier.

(2) Promptly after receipt of each voucher and statement of dollar cost, the Government shall, except as otherwise provided in this contract, subject to the provisions of paragraph (d) of this section make payment thereon as approved by the paying office indicated on the Cover Page.

(3) The financial voucher shall be submitted by the Contractor promptly following completion of the work under this contract, but in no event later than 120 days (or such longer period as the Contracting Officer may in his discretion approve in writing) from the date of such completion. This voucher, clearly identified as final voucher, shall be submitted on Form SF-1034 (original) and SF-1034(a) in three copies and supported by:

(i) Original and three copies of a certified fiscal report rendered by the Contractor as in paragraphs (b)(1) (i) and (ii) of this section;

(ii) Vendor's invoices as in paragraph (b)(1)(iii) of this section for equipment, supplies or commodities, or non-expendable property procured since the last voucher submission.

(iii) Bill of lading or airway bill as in paragraph (b)(1)(iv) of this section;

(iv) Refund check for the balance of funds (if any remaining on hand and not obligated by the Contractor).

(c) *Local currency payment.* The Contractor is fully responsible for the proper expenditure and control of

local currency, if any, provided under this contract. Local currency will be provid d to the Contractor in accordance with written instructions provided by the Mission Director. The written instructions will also include accounting, vouchering, and reporting procedures. A copy of the instructions shall be provided to the Contractor's Chief of Party and to the Contracting Officer. The costs of bonding personnel responsible for local currency are reimbursable under the contract.

(d) Until the expiration of three years after final dollar or local currency payment under this contract, the Contracting Officer may have the vouchers and statements of cost audited. Each payment theretofore made shall be subject to reduction for amounts included in the related voucher which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable cost. Any payment may be reduced for overpayments, or increased for underpayments, on preceding vouchers.

NOTE: When the clause entitled "Audit" (FPR 1-3.814-2(a)) is included in this contract, this paragraph is self-deleting.

(e) Upon compliance by the Contractor with all the provisions of this contract, acceptance by the Government of the work and final report, and a satisfactory accounting by the Contractor of all Government-owned property for which the Contractor had custodial responsibility, the Government shall promptly pay to the Contractor any moneys (dollars or local currency) due under the final voucher. The Government will make suitable reduction for any disallowance or indebtedness by the Contractor by applying the proceeds of the voucher first to such deductions and next to any unliquidated balance of advance remaining under the contract.

(f) The Contractor agrees that all approvals of the Mission Director and the Contracting Officer which are required by the provisions of this contract shall be preserved and made available as part of the Contractor's records which are required to be preserved and made available by the clauses of this contract entitled "Examination of Records by the Comptroller General" and "Audit".

(g) The Contractor agrees that any dollar or local currency refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor or any assignee under this contract shall be paid by the Contractor to the Government, to the extent that they are properly allocable to cost for which the Contractor has been reimbursed by the Government under this contract. Reasonable expenses incurred by the Contractor for the purpose of securing such refunds, rebates, credits, or other amounts shall be allowable costs hereunder when approved by the Contracting Officer. Prior to final payment under this contract, the Contractor and each assignee under this contract whose assignment is in effect at the time of final payment under this contract shall execute and deliver an assignment and release using AID Forms 1420-40 or 1420-44, as appropriate, as required in AIDPR 7-16.851.

[41 FR 4923, Feb. 3, 1976, as amended at 44 FR 39164, July 5, 1979; 46 FR 31889, June 18, 1981]

§ 7-7.5501-9 Negotiated overhead rates—postdetermined.

NEGOTIATED OVERHEAD RATES—POSTDETERMINED (MAY 1981)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment," the allowable indirect costs under this contract shall be obtained by applying negotiated overhead rates to bases agreed upon by the parties, as specified in this section.

(b) The contractor, as soon as possible but not later than 6 months after the close of each of his fiscal years during the term of this contract, shall submit to the Contracting Officer with copies to the cognizant audit activity, the AID Inspector General, and the AID Overhead and Special Cost Branch, a proposed final overhead rate or rates for the period, together with supporting cost data. Negotiation of final overhead rates by the contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of cost and acceptability of cost allocation methods shall be determined in accordance with Subpart 1-15.3 (Contracts With Educational Institutions) of the Federal Procurement Regulations as in effect on the date of this contract.

(d) The results of each negotiation shall be set forth in a written overhead rate agreement, executed by both parties. Such agreement is automatically incorporated in this contract upon execution and shall specify: (1) The agreed final rates, (2) the bases to which the rates apply, (3) the periods for which the rates apply, and (4) the items treated as direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of final overhead rates for any period, the contractor shall be reimbursed either at negotiated provisional rates as provided in the contract or at billing rates acceptable to the Contracting Officer, subject to appropriate adjustment when the final rates for that period are established. To prevent substantial over- or under- payment, and to apply either retroactively or prospectively: (1) Provisional rates may, at the request of either party be revised by mutual agreement, and (2) billing rates may be adjusted at any time by the Contracting Officer. Any such revisions of negotiated provisional rates specified in the contract shall be set forth in a modification to this contract.

(f) Any failure by the parties to agree on any final rate or rates under this clause shall be considered a dispute within the meaning of the "Disputes" clause of this Contract and shall be disposed of in accordance therewith.

[38 FR 15602, June 14, 1973, as amended at 38 FR 28675, Oct. 16, 1973; 41 FR 4924, Feb. 3, 1976; 46 FR 31889, June 18, 1981]

§ 7-7.5501-10 Limitation of cost or funds.

Insert the appropriate clause specified in FPR 1-7.402-2, as detailed in AIDPR 7-7.5001-8.

[45 FR 55726, Aug. 21, 1980]

§ 7-7.5501-11 Examination of records by Comptroller General.

Insert the clause set forth in FPR 1-7.103-3.

[38 FR 15602, June 14, 1973, as amended at 38 FR 28675, Oct. 16, 1973]

§ 7-7.5501-12 Audit.

Insert the clause set forth in FPR-1-3.814-2(a) under the conditions prescribed therein.

[39 FR 21132, June 19, 1974, as amended at 47 FR 13145, Mar. 29, 1982]

§ 7-7.5501-13 Reports.

REPORTS (FEBRUARY 1982)

(a) Unless otherwise provided in the schedule of this contract, the contractor shall prepare and submit to the Contracting Officer three copies, and the Mission four copies, of a semiannual report, within 45 days following the end of the period being covered, which shall include the following:

(1) A substantive report covering the status of the work under the contract, indicating progress made with respect thereto, setting forth plans for the ensuing period, including recommendations covering the current needs in the fields of activity covered under the terms of this contract.

(2) An administrative report covering expenditures, foreign country national trainees, and personnel employed under the contract.

(b) Contractor shall prepare and submit to the Contracting Officer such other reports as may be specified in the schedule.

(c) Unless otherwise provided in the schedule of this contract, at the conclusion of the work hereunder, the contractor shall prepare and submit to the Contracting Officer three copies, and to the Mission four copies, of a final report which summarizes the accomplishments of the assignment, methods of work used and recommendations regarding unfinished work and/or program continuation. The final report shall be submitted within 60 days after completion of the work hereunder unless required date of submission is extended by the Contracting Officer.

(d) Contractor shall submit two copies of each report required by paragraphs (a)(1), (b), and (c) of this section or any other report of a technical nature required by the schedule to the AID Reference Center, Agency for International Development, Washington, D.C. 20523. The title page of all reports forwarded to the Office of Development Information and Utilization, Bureau for Development Support (DS/DIU), pursuant to this paragraph (d) shall include the contract number, project number and project title as set forth in the schedule of this contract.

[38 FR 15602, June 14, 1973, as amended at 38 FR 28675, Oct. 16, 1973; 45 FR 44281, July 1, 1980; 47 FR 13145, Mar. 29, 1982; 47 FR 14914, Apr. 7, 1982]

§ 7-7.5501-14 Research activities and the use of graduate students.

RESEARCH ACTIVITIES AND THE USE OF GRADUATE STUDENTS (JUNE 1973)

To the extent authorized in the operational plan (App. A), research activities pertinent to the program shall be reimbursed hereunder. Graduate students may be retained by the contractor to assist in such research.

§ 7-7.5501-15 Training of foreign country nationals.

TRAINING OF FOREIGN COUNTRY NATIONALS (MAY 1982)

(a) To the extent foreign country national training is authorized in the operational plan (App. A), the contractor shall be reimbursed for the following reasonable and allocable costs incurred in providing training and observation to participants in the United States or other approved location:

(1) Customary tuition and fees of the institution in which the training takes place, as published in catalogs and announcements.

(2) Typing of papers and allowances for required textbooks, the titles of which will be approved by the contractor.

(3) Travel within the United States or other countries (other than the country of the participant) as approved by the contractor, including the cost of travel from port of entry into the United States to contractor's campus and from the contractor's campus to port of embarkation from the United States.

(4) Subsistence while in the United States or in third countries not to exceed maximum AID rates established in the applicable AID Handbook, furnished to the contractor, as from time to time amended.

(5) Other direct costs authorized in the operational plan or otherwise determined by the Contracting Officer to be allowable in accordance with the general provisions clause of this contract entitled "Allowable Cost and Payment".

(b)(1) Health and accident coverage for foreign country nationals is governed by the clause of this Contract entitled Health and Accident Coverage for AID Participant Trainees.

(2) The Contractor shall prepare and submit to the Office of International Training, three copies of AID Form 1380-9, "Monthly Report of Participants Under Grant, Loan, or Contract Programs", on the last day of each month.

(c) For participants assigned to the contractor for whom specifically designed courses not otherwise covered in paragraph (a)(1) of this clause are authorized, the contractor shall be paid the following in lieu of the costs authorized in paragraph (a)(1) of this clause.

(1) For not exceeding 20 instructional days (days on which such courses are scheduled to meet and are actually conducted):

(i) One participant: $150 for the first day, and $50 per day for each additional day, up to 19 days.

(ii) Groups up to and including 10 participants: for the first day, $150 for the first participant, and $50 for each additional participant. For each additional day, up to 19 days, $50 for each participant.

(2) For more than 20 instructional days, or more than 10 participants: The contractor shall submit a proposal including supporting cost and pricing data to the Contracting Officer for approval.

(d) The contractor shall prepare and submit to the Office of International Training a nonobligating Project Implementation Order/Participant, AID

Form 1380-1, and Participant Biographical Data, AID Form 1380-2, on all participants trained under this contract, either in the United States or third country.

(e) Mandatory use of visa eligibility Form DSP 66A by participants. The Contractor shall insure that any foreign students brought to the United States for training under this contract uses Visa Eligibility Form DSP 66A (AID version) to obtain a Visa.

[38 FR 15602, June 14, 1973, as amended at 38 FR 28675, Oct. 16, 1973; 41 FR 4924, Feb 3, 1976; 42 FR 28541, June 3, 1977; 45 FR 44281, July 1, 1980; 47 FR 25966, June 16, 1982]

§ 7-7.5501-16 Source and nationality requirements for procurement of goods and services.

Insert the clause set forth in § 7-6.5103.

[45 FR 44287, July 1, 1980]

§ 7-7.5501-17 Subcontracts.

Insert the clause set forth in FPR 1-7.402 under the conditions set forth therein.

[38 FR 15602, June 14, 1973, as amended at 45 FR 44281, July 1, 1930; 47 FR 13145, Mar. 29, 1982]

§ 7-7.5501-18 Government property.

(a) Insert the clause specified in FPR 1-7.402-25(b).

(b) The following preface is to be used with the FPR clause:

("Government property" or "Government furnished property" as used in the following clause means non-expendable property owned by or leased to the U.S. Government, and furnished to the contractor, or non-expendable property acquired by the contractor under the contract and titled to the U.S. Government. Non-expendable property is property which is complete in itself, does not lose its identity or become a component part of another article when put into use; is durable, with an expected service life of two years or more; and which has unit cost of more than $500. This definition applies only to personal property purchased by the contractor or delivered directly to the contractor from the vendor. Personal property issued to the contractor in the host country by the mission accountable officer and listed as non-expendable is reportable to the mission accountable officer regardless of its value.)

(c) The following final paragraph is to be added to the FPR clause specified above:

REPORTING REQUIREMENTS

The contractor will submit an annual report on all non-expendable property in a form and manner acceptable to AID substantially as follows:

ANNUAL REPORT OF AID OWNED NONEXPENDABLE PROPERTY IN CONTRACTOR'S CUSTODY

(Name of Contractor)

As of (End of Contract Year), 19xx

	Motor vehicles	Furniture and furnishings		Other nonexpendable property
		Office	Living quarters	
A. Value of property as of last report				
B. Transactions during this reporting period				
1. Acquisitons (add):				
a. Purchased by contractor				
b. Transferred from AID				
c. Transferred from others—Without reimbursement [1]				
2. Disposals (deduct):				
a. Returned to AID				
b. Transferred to AID—Contractor Purchased				
c. Transferred to other Government agencies [1]				
d. Other Disposals [1]				

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ANNUAL REPORT OF AID OWNED NONEXPENDABLE PROPERTY IN CONTRACTOR'S CUSTODY—Continued

(Name of Contractor)

As of (End of Contract Year), 19xx

	Motor vehicles	Furniture and furnishings		Other nonexpendable property
		Office	Living quarters	
C Value of property as of reporting date				
D Estimated average age of contractor held property				
	Years	Years	Years	Years

[1] Explain if transactions were not processed through or otherwise authorized by AID.

Property Inventory Verifications

I attest that: (1) Physical inventories of AID owned non-expendable property are taken not less frequently than annually; (2) the accountability records maintained for AID owned property in our possession are in agreement with such inventories; and (3) the total of the detailed accountability records maintained agrees with the property value shown opposite line C above, and the estimated average age of each category of property is as cited opposite line D above.

_____

Authorized Signature

[44 FR 39164, July 5, 1979]

§ 7-7.5501-19 Material change in conditions.

MATERIAL CHANGE IN CONDITIONS (JUNE 1973)

If the contractor advises the Contracting Officer of a material change in the conditions which substantially interferes with or impedes the performance of the contract in accordance with its terms or with sound professional standards, the parties will mutually consider appropriate action to be taken, which might include, but not limited to, modification of the contract or its termination in whole or part pursuant to the general provisions clause of the contract entitled "Termination for Convenience of the Government." Failure of the parties to agree on the existence of such circumstances and consequent refusal of the Government to terminate after receipt of a specific written request to do so will be a dispute concerning a question of fact within the meaning of the general provision clause of the contract entitled "Disputes."

§ 7-7.5501-20 Disputes.

Insert the clause set forth in FPR 1-7.102-12.

[45 FR 44281, July 1, 1980, as amended at 47 FR 25966, June 16, 1982]

§ 7-7.5501-21 Termination for convenience of the government.

Insert the clause set forth in FPR 1-8.704-1 and the following paragraph (i) of this section:

(i) With regard to paragraph (e) above, in the event that this contract is terminated by AID or in the event that an employee's services are terminated by the Contractor at the request of AID for reasons other than misconduct, Contractor will be reimbursed for salary payments (excluding overseas incentive, differential and allowances, if any) to employees to the extent such payments are reasonable and to the extent Contractor is liable to make such payments under its agreements with such employees, subject to the following:

(1) The employee is not otherwise gainfully employed or, if gainfully employed, but at a lesser compensation, payments will be made to equalize the difference between such lesser compensation and the employee's salary (excluding overseas incentive, differential and allowances, if any); and

(2) Such payments shall not extend beyond the date the employee's contract would have expired, or 1 year from the date of the employee's termination, or the date on which this contract would have expired but for termination, whichever is earlier.

(3) Contractor agrees to exert its best efforts to minimize costs under this provision, including the expeditious return of its employees to their points of origin in order to

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facilitate the employee in locating gainful employment.

[38 FR 28675, Oct. 16, 1973]

§ 7-7.5501-22 Rights in data and publication.

RIGHTS IN DATA AND PUBLICATION (JUNE 1973)

(a) *Rights in data.* (1) The term "data" as used herein includes writings, software, electronic or punchcard stored data, models, sound recordings, pictorial reproductions, drawings, or other graphic representations, and works of any similar nature (whether or not copyrighted) which are developed or created in the course of the performance of this contract, or from materials or information acquired as a result of this contractor's activities hereunder. The term "data" does not include financial reports, cost analyses, and other information incidental to contract administration. The term "software" means any computer programs with supporting documentation and specifications necessary to produce desired outputs. The term excludes programs supplied by the hardware manufacturer. The term "model" in this context means formal, analytic structures which describe certain interrelated aspects of economic, social, or political behavior. The complete model shall include supporting information and equations which describe and explain basic structure and assumptions. "Subject data" is data which is specified to be delivered under this contract.

(2) For copyright purposes, all subject data shall be the property of the Government. The contractor agrees not to assert any rights at common law or equity in subject data, nor to establish any claim to statutory copyright therein.

(3) The contractor shall be responsible for assuring that no copyrighted matter is included in data furnished hereunder without the written permission of the copyright owner for the Government to use such copyrighted matter in the manner described in paragraph (a)(4) of this section.

(4) The contractor agrees to grant and does hereby grant to the Government and its officers, agents, and employees acting within the scope of their official duties, a royalty-free, nonexclusive, and irrevocable license throughout the world to publish, translate, reproduce, deliver, perform, use, and dispose of, and to authorize others to do so, all data, whether or not now or hereafter covered by copyright.

(5) Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

(6) Paragraphs (a)(3) and (4) of this section are not applicable to material furnished to the contractor by the Government and incorporated into data produced under the contract, provided such incorporated material is identified by the contractor at the time the data is furnished to the Government.

(b) *Publication of data.* (1) AID's policy with respect to publication, or release to parties other than those specifically authorized, of material gathered or developed under contracts with educational institutions is set forth in the statement of policy published in the FEDERAL REGISTER of May 14, 1973 (38 FR 12621), as revised. That policy is applicable to this contract.

(2) Unless otherwise provided in the schedule, and subject to AID's prepublication review as hereinafter set forth, no permission or authorization from AID will be required prior to publication, release, or reproduction of any data.

(3) No one employed under this contract will have access to classified material for performance of work under this contract; however, if, in its prepublication review, AID should discover that any classified material has inadvertently been included in a contract manuscript, it will notify the contractor, who agrees that the identified material will not be published unless he can demonstrate that the material is available from unclassified sources.

(c) *Prepublication review.* The contractor agrees to allow AID the opportunity to review any data intended for publication and provide comments

thereon, and agrees to give serious consideration to such comments prior to publication. The contractor shall deliver to AID a notice of intent to publish together with a copy of the proposed publication not later than the date of its submission to the publisher. AID reserves the right to disclaim endorsement of the opinions expressed in the proposed publication of subject data, and to dissociate itself from sponsorship or publication of any other data. In the event AID exercises its right to disclaim or dissociate as aforesaid, the contractor shall be so notified in writing by the Contracting Officer; such notice shall contain an appropriate statement of disclaimer or dissociation which shall be inserted in the publication.

(d) *Acknowledgements.* All publications shall acknowledge the contributions of the parties hereto, unless such acknowledgement is not desired by the contributing parties.

(e) *Copies.* In case of publication of any of the data described hereinabove, a copy of such publication shall be supplied to the Contracting Officer at no cost to the Government.

(f) *Personnel commitments.* The contractor shall secure from all personnel engaged in the performance of this contract commitments adequate to assure that the contractor will be able to discharge its obligations under this "Rights in Data and Publication" clause.

§ 7-7.5501-23 Authorization and consent.

Insert the clause set forth in AIDPR 7-7.5001-27.

§ 7-7.5501-24 Notice and assistance regarding patent and copyright infringement.

Insert the clause set forth in FPR 1-7.103-4 and the following paragraph (c):

(c) This clause shall be included in all subcontracts.

[38 FR 15602, June 14, 1973, as amended at 38 FR 28676, Oct. 16, 1973]

§ 7-7.5501-25 Insurance-liability to third persons.

Insert the appropriate clause as specified in FPR 1-7.404-9.

[45 FR 55726, Aug. 21, 1980]

§ 7-7.5501-26 Assignment of claims.

ASSIGNMENT OF CLAIMS (JUNE 1973)

Pursuant to the provisions of the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), if this contract provides for payments aggregating $1,000 or more, claims for moneys due or to become due the contractor from the Government under this contract may be assigned to a bank, trust company, or other financing institution, including any Federal lending agency, and may thereafter be further assigned and reassigned to any such institution. Any such assignment or reassignment shall cover all dollar amounts payable under this contract and not already paid, and shall not be made to more than one party, except that any such assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in such financing.

§ 7-7.5501-27 Inspection.

INSPECTION (JUNE 1973)

In order to assure continuous and cooperative planning and operations hereunder, contractor shall encourage and permit AID or its authorized representatives, at all reasonable times, upon advance notice to visit the contractor's facilities and to inspect the facilities, activities, and work pertinent to the contract, either in the United States or abroad, and to interview personnel engaged in the performance of the contract to the extent deemed necessary by AID.

§ 7-7.5501-28 Equal opportunity.

Insert the clause set forth in FPR 1-12.803-2.

§ 7-7.5501-29 Utilization of small business and small disadvantaged business concerns.

Insert the clause set forth in paragraph A of OFPP Policy Letter 80-2, as contained in Attachment A of FPR Temporary Regulation 50, Supplement 2, and the paragraph (e) set forth in AIDPR 7-7.5001-20.

[45 FR 44281, July 1, 1980]

§ 7-7.5501-30 Utilization of labor surplus area concerns.

Insert the clause set forth in FPR 1-1.805-3(a).

§ 7-7.5501-31 Convict labor.

Insert the clause set forth in FPR 1-12.204.

[38 FR 15602, June 14, 1973, as amended at 40 FR 3449, Jan. 22, 1975]

§ 7-7.5501-32 Officials not to benefit.

Insert the clause set forth in AIDPR 7-7.102.

[38 FR 15602, June 14, 1973, as amended at 38 FR 28676, Oct. 16, 1973; 45 FR 44282, July 1, 1980]

§ 7-7.5501-33 Covenant against contingent fees.

Insert the clause set forth in FPR 1-1.503.

§ 7-7.5501-34 Language, weights and measures.

Insert the clause set forth in AIDPR 7-7.5001-37.

§ 7-7.5501-35 Small business and small disadvantaged business subcontracting plan/incentive subcontracting program.

Insert the appropriate clause form paragraphs C, D, or E of OFPP Policy Letter 80-2, as contained in Attachment A of FPR Temporary Regulation 50, Supplement 2, under the conditions specified therein.

[45 FR 44282, July 1, 1980]

§ 7-7.5501-36 Disabled veterans and veterans of the Vietnam era.

Insert the clause set forth in FPR Temporary Regulation 39.

[45 FR 44282, July 1, 1980]

§ 7-7.5501-37 [Reserved]

§ 7-7.5501-38 Notices.

Insert the clause set forth in AIDPR 7-7.5001-39.

§ 7-7.5501-39 Employment of the handicapped.

Insert the clause set forth in FPR Temporary Regulation 38.

[45 FR 44282, July 1, 1980]

§ 7-7.5501-40 Clean air and water.

Insert the clause set forth in FPR 1-1.2302-2 under the conditions set forth therein.

[42 FR 4843, Jan. 26, 1977]

§ 7-7.5501-41 Health and accident coverage for AID participant trainees.

Insert the clause set forth in AIDPR 7-7.5003-9.

[45 FR 44282, July 1, 1980]

§ 7-7.5501-42 Use of government facilities and personnel.

Insert the clause set forth in AIDPR 7-7.5001-45.

[45 FR 44282, July 1, 1980]

§ 7-7.5501-43 Utilization of women-owned business concerns.

Insert the clause entitled "Utilization of Women-Owned Business Concerns (Over $10,000)" as specified in OFPP Policy Letter 80-4, as contained in Attachment A of FPR Temporary Regulation 54.

[45 FR 44282, July 1, 1980]

§ 7-7.5502 Additional clauses.

These additional clauses are mandatory for cost reimbursement type contracts with educational institutions which will be performed in whole or in part outside the United States. (These clauses are in addition to the clauses set forth in § 7-7.5501.0.)

[38 FR 28676, Oct. 16, 1973]

§ 7-7.5502-1 Definitions.

DEFINITIONS (SEPTEMBER 1981)

(a) "Campus personnel" shall mean representatives of the contractor performing services under the contract at the contractor's home institution and shall include the campus coordinator.

(b) "Contractor's chief of party" shall mean the representative of the contractor in the cooperating country who shall be responsible for supervision of the performance of all duties undertaken by the contractor in the cooperating country.

(c) "Cooperating country or countries" shall mean a foreign country in which there is an AID assistance program or activity administered by AID in which services are to be rendered hereunder.

(d) "Cooperating country national" shall mean an individual who is a citizen or resident of the cooperating country.

(e) "Cooperating government" shall mean the government of the cooperating country.

(f) "Dependents" shall mean:

(1) Spouse;

(2) Children (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support;

(3) Parents (including step and legally adoptive parents), of the employee or of the spouse, when such parents are at least 51 percent dependent on the employee for support;

(4) Sisters and brothers (including step or adoptive sisters or brothers) of the employee, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the employee for support, unmarried, and under 21 years of age, or regardless of age, are incapable of self-support.

(g) "Local currency" shall mean the currency of the cooperating country.

(h) "Mission" shall mean the United States AID Mission to, or principal AID office in, the cooperating country.

(i) "Mission Director" shall mean the principal officer in the Mission in the cooperating country, or his designated representative.

(j) "Participants" shall mean nationals of the cooperating country brought to the United States or to third countries for training.

(k) "Regular employee" shall mean a contractor employee appointed to serve 1 year or more in the cooperating country.

(l) "Resident" shall mean an individual who has been physically present for 3 consecutive years, substantially uninterrupted, in a country.

(m) "Short-term employee" shall mean a contractor employee appointed to serve less than 1 year in the cooperating country.

(n) "Third country national" shall mean an individual who is neither a U.S. citizen, U.S. resident, or a cooperating country national.

(o) "Traveler" shall mean the contractor's regular employees, dependents of the contractor's regular employees, the contractor's short term employees, consultants, campus coordinator, or other professional personnel on its staff, prospective regular or short term employees and spouses when attending personal interviews in accordance with the contractor's normal practice in selecting its personal, or other persons designated as travelers by the contracting officer or the Mission Director, as appropriate.

(p) "Third-country national (TCN) employee" means an individual who meets the citizenship requirements of AIDPR 7-1.260 and is hired while residing outside the United States for work in a cooperating country.

(q) "Cooperating-country national (CCN) employee" means an individual who meets the citizenship requirements of AIDPR 7-1.261 and is hired while residing outside the United States for work in a cooperating country.

[38 FR 15602, June 14, 1973, as amended at 46 FR 51917, Oct. 23, 1981]

§ 7-7.5502-2 Contractor—mission relationships.

CONTRACTOR-MISSION RELATIONSHIPS (JUNE 1973)

(a) The contractor acknowledges that this contract is an important part of the United States Foreign Assistance program and agrees that his operations and those of his employees in the cooperating country will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) The Mission Director is the chief representative of AID in the cooperating country. In this capacity, he is responsible for the total AID program in the cooperating country including certain administrative responsibilities set forth in this contract and for advising AID regarding the performance of the work under the contract and its effect on the United States Foreign Assist-

ance program. Although the contractor will be responsible for all professional, technical, and administrative details of the work called for by the contract, he shall be under the guidance of the Mission Director in matters relating to foreign policy. The chief of party shall keep the Mission Director currently informed of the progress of the work under the contract.

(c) It is understood by the parties that the contractor's responsibilities shall not be restrictive of academic freedom. Notwithstanding these academic freedoms, the contractor's employees, while in the cooperating country, are expected to show respect for its conventions, customs, and institutions, to abide by applicable laws and regulations, and not to interfere in its internal political affairs.

(d) In the event the conduct of any contractor employee is not in accordance with the preceding paragraphs, the contractor's chief of party shall consult with the Mission Director and the employee involved and shall recommend to the contractor a course of action with regard to such employee.

(e) The parties recognize the right of the U.S. Ambassador to direct the removal from a country of any U.S. citizen or the discharge from this contract of any third country national or cooperating country national when, in the discretion of the Ambassador, the interests of the United States so require.

(f) If it is determined that the services of such employee shall be terminated, the contractor shall use his best efforts to cause the return of such employee to the United States, or point of origin, as appropriate.

§ 7-7.5502-3 Personnel.

PERSONNEL (MAY 1982)

(a) *Clearance*—(1) *Individuals Engaged or Assigned Within the United States.* The contractor will obtain written notification from the Contracting Officer of cooperating country clearance of any employee sent outside the United States to perform duties under this contract.

(2) *Individuals Engaged or Assigned When Outside the United States.* No individual shall be engaged or assigned when outside the United States to perform work outside the United States under this contract unless authorized in the schedule or otherwise approved by the Contracting Officer or Mission Director. However, when services are performed in the cooperating country on a casual or irregular basis or in an emergency, exception to this provision can be made in accordance with instructions or regulations established by the Mission Director.

(b) *Duration of appointments.* (1) Regular employees will normally be appointed for a minimum of 2 years, which period includes orientation (less language training), in the United States and authorized international travel under the contract except:

(i) An appointment may be made for less than 2 years if the contract has less than 2 years but more than 1 year to run; provided, that if the contract is extended the appointment shall also be extended to the full 2 years. This provision shall be reflected in the employment agreement prior to employment under this contract.

(ii) When a 2-year appointment is not required, appointment may be made for less than 2 years but in no event less than 1 year.

(iii) When the normal tour of duty established for AID personnel at a particular post is less than 2 years, then a normal appointment under this contract may be of the same duration; or

(iv) When the contractor is unable to make appointments of regular employees for a full 2 years, the contractor may make appointments of less than 2 but not less than 1 year, provided that such appointment is approved by the Contracting Officer.

(2) Services required for less than 1 year will be considered short term appointments and the employee will be considered a short term employee.

(c) *Employment of Dependents.* If any person who is employed for services in the cooperating country under this Contract is either: (1) A dependent of an employee of the Government working in the cooperating country, or (2) a dependent of a Contractor employee working under a contract with the Government in the cooperating

country, such person shall continue to hold the status of a dependent and be entitled and subject to the Contract provisions which apply to dependents except as they apply to employees. He or she shall be entitled to salary for the time services are actually performed in the cooperating country, and differential and allowances as established by the Standardized Regulations (Government Civilians, Foreign Areas).

(d) *Physical fitness of employees and dependents*—(1) *Predeparture.* For all employees (other than those hired in the cooperating country) and their authorized dependents, it shall be certified by a licensed doctor of medicine that in his opinion the employee is physically qualified to engage in the type of activity for which he is to be employed and that he and his dependents are physically able to reside in the country to which he is assigned. If the contractor has no such medical certificate on file prior to the departure for the cooperating country of any employee or authorized dependent and such employee is unable to perform the type of activity for which he is employed and complete his tour of duty because of any physical disability (other than physical disability arising from an accident while employed under this contract) or such authorized dependent is unable to reside in the cooperating country for at least 9 months or one-half the period, whichever is greater, of the related employee's initial tour of duty because of any physical disability (other than physical disability arising from an accident while a dependent under this contract), the contractor shall not be reimbursed for the return transportation of the physically disabled employee or dependent required to return because of such disability.

(2) *End of tour.* The contractor is authorized to provide its regular employees and dependents with physical examination within 60 days after completion of their regular tours of duty.

(3) The Contractor is encouraged to establish its own policy of pre- and post-tour medical examinations. As a contribution, AID shall reimburse the Contractor for physical examinations authorized in paragraphs (d) (1) and (2) of this section as follows:

(i) For the employee and dependents 12 years of age and over: Not to exceed $100 for the physical examination plus reimbursement of charges for immunizations.

(ii) For dependents under 12 years of age: Not to exceed $40 for each child plus reimbursement of charges for immunizations.

(e) *Importation, purchase or sale of personal property or automobiles.* To the extent permitted by the cooperating country laws and regulations, the importation, purchase and sale of personal property or automobiles by contractor employees and their dependents in the cooperating country shall be subject to the same limitations and prohibitions which apply to Mission employees and their dependents.

(f) *Economic and financial activities.* Other than work to be performed under this contract for which an employee is assigned by the contractor, no regular or short-term employee of the contractor shall engage, directly, or indirectly, either in his own name or in the name or through the agency of another person, in any business, profession, or occupation in the cooperating country or other foreign countries to which he is assigned, nor shall he make loans or investments to or in any business, profession, or occupation in the cooperating country or other foreign countries to which he is assigned.

[38 FR 15602, June 14, 1973, as amended at 38 FR 28676, Oct. 16, 1973; 41 FR 4924, Feb. 3, 1976; 47 FR 25966, June 16, 1982]

§ 7-7.5502-4 Personnel compensation.

PERSONNEL COMPENSATION (DECEMBER 1981)

(a) Overseas recruitment incentive.

(1) Contractor employees serving overseas under this contract who do not qualify, request, and receive an exemption for overseas income provided under Section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911) are eligible to receive an overseas recruitment incentive, provided that the average incentive for all such employees does not exceed 10 percent of the initial

base annual salary of all employees eligible for the incentive under this contract.

(2) The overseas recruitment incentive is payable under one of the following alternative methods:

(i) As a lump-sum amount after the eligible employee has completed his tour of duty in the Cooperating Country under this contract, and has furnished to the Contractor a Certification that he does not qualify, and will not apply for an exemption from overseas income as provided by 26 U.S.C. 911 (Contractor shall retain such Certifications for post-audit); or

(ii) At the option of the Contractor, the overseas recruitment incentive may be paid in increments during an employee's tour of duty; provided however, that payments made by the Contractor to employees who become eligible for an exemption from overseas income as provided by 26 U.S.C. 911, which payments were reimbursed by AID under this contract, shall be refunded to AID; and provided further, that neither the Contractor's (nor the Subcontractor's) inability to collect refunds from ineligible employees shall be used as a basis to excuse subsequent refunds by the Contractor to AID.

(3) If the overseas recruitment incentive causes the employee's salary to exceed the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1, as set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended, Contracting Officer approval must be obtained.

(b) The work week for the contractor's overseas employees should take into consideration local practices and, in collaboration with the Mission Director, shall be established to coincide with the work week for those employees of the AID Mission and/or the cooperating country associated with the work of this contract.

[38 FR 15602, June 14, 1973, as amended at 41 FR 1914, Jan. 13, 1976; 47 FR 13145, Mar. 29, 1982]

§ 7-7.5502-5 Orientation and language training.

ORIENTATION AND LANGUAGE TRAINING (JUNE 1973)

(a) Regular employees shall receive a maximum of 2 weeks AID sponsored orientation before travel overseas. The dates of orientation shall be selected by the contractor from the orientation schedule provided by AID.

(b) Participation in AID sponsored orientation in no way relieves the contractor of his responsibility for assuring that all employees, regular and short term, are properly oriented. As an addition to or substitution for AID's sponsored orientation for regular employees, the following types of orientation may be authorized taking into consideration specific job requirements, the employee's prior overseas experience, or unusual circumstances:

(1) Modified orientation.

(2) Language training, particularly when significant for operating capabilities.

(3) Orientation and language training for regular employee's dependents.

(4) Institution-sponsored orientation.

(5) Orientation in all matters related to the administrative, logistical, and technical aspects of the employee's movement to, and tour of duty in the cooperating country.

(c) Authorization for an additional or alternate orientation program, if any, shall be either set forth in the schedule or provided in writing by the Contracting Officer.

(d) Travel expenses not to exceed one (1) round trip from regular employee's residence to place of orientation and return will be reimbursed, pursuant to the general provision of this contract entitled "travel expenses". Allowable salary costs during the period of orientation are also reimbursable.

§ 7-7.5502-6 Leave and holidays.

LEAVE AND HOLIDAYS (SEPTEMBER 1981)

(a) *Vacation leave overseas.* (1) The Contractor may grant to his employees working overseas under this Contract, vacations of reasonable duration

in accordance with the Contractor's on-campus practice for his employees, but in no event shall such vacation leave be earned at a rate exceeding twenty-six (26) work days per annum. Vacation leave is provided under this Contract primarily for purposes of affording necessary rest and recreation to regular employees during their tour of duty in the Cooperating Country. The Contractor's Chief of Party, the employee and the Cooperating Country institution associated with this project shall develop vacation leave schedules early in the employee's tour of duty taking into consideration project requirements, employee preference, and other factors.

(2) Leave taken during the concluding weeks of an employee's tour shall be included in the established leave schedule and be limited to that amount of leave which can be earned during a twelve month period unless approved in accordance with paragraph (a)(3) of this section.

(3) Vacation leave earned but not taken by the end of the employee's tour pursuant to paragraphs (a) (1) and (2) of this section will be forfeited, unless the requirements of the project precluded the employee from taking such leave and the Contracting Officer, with the endorsement of the Mission, approves one of the following as an alternative:

(i) Taking, during the concluding weeks of the employee's tour, leave not permitted under paragraph (a)(2) of this section, or

(ii) Lump-sum payment for leave not taken provided such leave does not exceed the number of days which can be earned by the employee during a twelve month period.

(b) *Sick leave.* Sick leave is earned by regular and short-term employees in accordance with the contractor's usual on-campus practice but not to exceed 13-work days per annum or 4 hours every 2 weeks. Additional sick leave after use of accrued vacation leave may be advanced in accordance with contractor's usual practice, if in the judgment of the contractor's chief of party, it is determined that such additional leave is in the best interest of the project. In no event shall such additional leave exceed 30 days. The contractor agrees to reimburse AID for leave used in excess of the amount earned during the employee's assignment under this contract. Sick leave earned and unused at the end of a regular tour of duty may be carried over to an immediately succeeding tour of duty under this contract. The taking of authorized home leave shall not constitute a break in service for the purpose of sick leave carry-over. Contractor employees will not be compensated for unused sick leave at the completion of their duties under this contract.

(c) *Home leave.* (1) Home leave is leave earned for service abroad for use only in the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A regular employee who is a U.S. citizen or resident and has served at least 2 years overseas, as defined in paragraph (c)(4) of this section, under this contract and has not taken more than 30-work days leave (vacation, sick, or leave without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas: *Provided,* That such regular employees agree to return overseas upon completion of home leave under an additional 2-year appointment, or for such shorter period of not less than 1 year of overseas service under the contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico or the possessions of the United States and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2), of this section, that the contractor's regular employee must have served 2 years overseas under this contract to be eligible for home leave, contractor may grant advance home leave to such regular employee subject to all of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this contract;

(ii) The regular employee shall have served a minimum of 18 months in the

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cooperating country on his current tour of duty under this contract; and

(iii) The regular employee shall have agreed to return to the Cooperating Country to serve out the remainder of his current tour of duty and an additional 2-year appointment under this contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3), of this section, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the United States port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the United States port of debarkation from international travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The contractor will be responsible for reimbursing AID for salary payments made during home leave, if in spite of the undertaking of the new appointment, the regular employee, except for reasons beyond his control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this contract.

(6) To the extent deemed necessary by the contractor, regular employees in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation on campus or at AID/Washington before returning to their post of duty. Consultation at locations other than AID/Washington or on campus, as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(7) Except as provided in the schedule or approved by the Mission Director or the Contracting Officer, home leave is not authorized for TCN or CCN employees.

(d) *Holidays.* Holidays for contractor employees serving overseas should take into consideration local practices and shall be established in collaboration with the Mission Director.

[38 FR 15602, June 14, 1973, as amended at 39 FR 25489, July 11, 1974; 46 FR 51917, Oct. 23, 1981]

§ 7-7.5502-7 Post privileges.

POST PRIVILEGES (SEPTEMBER 1981)

(a) Health room services of the same type that are normally provided to AID direct-hire U.S. citizen employees are generally available only for U.S. citizen contractor or subcontractor employees and their authorized dependents (regardless of citizenship) at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services do include such medications as may be available; immunizations and preventive health measures; diagnostic examinations and advice; emergency treatment; and home visits as medically indicated.

(b) Privileges such as the use of APO, PX's, commissaries, and officer's clubs are established at posts abroad pursuant to agreements between the U.S. and cooperating governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, AID Mission, U.S. Information Service, and the Military. Normally, the agreements do not permit these facilities to be made available to nonofficial Americans.

[38 FR 28676, Oct. 16, 1973, as amended at 39 FR 21132, June 19, 1974; 46 FR 51917, Oct. 23, 1981]

§ 7-7.5502-8 Differential and allowances.

Insert the clause set forth in AIDPR 7-7.5002-7.

[39 FR 21132, June 19, 1974]

§ 7-7.5502-9 Travel expenses.

Insert the clause set forth in AIDPR 7-7.5002-3.

[39 FR 21132, June 19, 1974]

§ 7-7.5502-10 Transportation and storage expenses.

Insert the clause set forth in AIDPR 7-7.5002-15.

[39 FR 21132, June 19, 1974]

§ 7-7.5502-11 Inspection trips by contractor's officers and executives.

INSPECTION TRIPS BY CONTRACTOR'S OFFICERS AND EXECUTIVES (JUNE 1973)

Provided it is approved by the Mission Director, the contractor may send the campus coordinator, a professional member of his staff as an alternate to the campus coordinator, or such of his senior officials (e.g., president, vice presidents, deans, or department heads) to the cooperating country as may be required to review the progress of the work under this contract. Except for the campus coordinator or his alternate, no direct salary charges will be paid hereunder with respect to any such officials.

§ 7-7.5502-12 Notice of changes in regulations.

NOTICE OF CHANGES IN REGULATIONS (JUNE 1973)

Changes in travel, differential, and allowance regulations shall be effective on either the beginning of the contractor's next pay period following receipt of the notice or the effective date of such notice, whichever is later. Notice of changes shall be sent by the Contracting Officer or Mission Director pursuant to the clause of the general provisions of this contract entitled "Notices".

§ 7-7.5502-13 Use of pouch facilities.

Insert the clause set forth in AIDPR 7-7.5002-17.

[46 FR 10915, Feb. 5, 1981]

§ 7-7.5502-14 Conversion of U.S. dollars to local currency.

Insert the clause set forth in AIDPR 7-7.5002-8.

§ 7-7.5502-15 Facilities and services to be arranged by AID.

FACILITIES AND SERVICES TO BE ARRANGED BY AID (JUNE 1973)

(a) In order to assure full local benefits from the work as well as its expeditious conduct, AID agrees to arrange with appropriate authorities in the cooperating country for a clear assignment of responsibility to the appropriate officials for the development of this undertaking and a clear assignment of responsibilities to the contractor.

(b) AID will arrange with the officials of the cooperating country to develop, to the extent permitted by their available resources, their own personnel, facilities, programs, and activities to permit the early and effective accomplishment of the objectives of the contract.

§ 7-7.5502-16 Title to and care of property.

Insert the clause set forth in AIDPR 7-7.5002-4.

[44 FR 39165, July 5, 1979]

§ 7-7.5502-17 Marking.

Insert the clause set forth in AIDPR 7-7.5002-5.

[45 FR 55726, Aug. 21, 1980]

§ 7-7.5502-18 Insurance—workmen's compensation, private automobile, marine and air cargo (Overseas).

Insert the clause set forth in AIDPR 7-7.5002-10.

§ 7-7.5502-19 Preference for U.S. flag air carriers.

Insert the clause set forth in FPR 1-1.323-2.

[42 FR 4843, Jan. 26, 1977]

§ 7-7.5503 Clauses to be used when applicable.

§ 7-7.5503-1 Alterations in contract.

Insert the clause set forth in AIDPR 7-7.5003-1.

§ 7-7.5503-2 Advance of funds.

When an advance of funds is to be made (other than by means of a Federal Reserve Letter of Credit), insert the following clause:

ADVANCE OF FUNDS (JUNE 1973)

(a) AID will, upon request from the contractor, in accordance with paragraph (b) of this section, make an initial advance to the contractor in the amount stated in the contract schedule pursuant to the provisions of FPR 1-30.4 as it applies to educational institutions for research and development work. AID will thereafter reimburse the contractor an amount equal to reported expenditures in order to replenish the advance fund on an imprest basis. AID will replenish the fund on a quarterly basis (or other agreed interval) upon submission of documents prescribed in the general provisions clause entitled "Allowable Cost and Payment" until such time as the total amount of reimbursements together with the initial advance equals the amount of the AID commitment stated in the schedule. Thereafter, vouchers for expenditures submitted by the contractor will not be reimbursed but will be applied to liquidate the remaining outstanding advance. In the event the total amount of subsequent vouchers are insufficient to liquidate the amount of the outstanding advance, the contractor will refund the difference to AID in accordance with FPR 1-30.414-2(d).

(b) The contractor will submit to the paying office indicated on the cover page voucher form SF 1034 (original) and SF 1034(a) in three copies, properly executed, requesting advance of funds in the agreed amount required to establish a working fund.

(c) The contractor shall make a repayment to AID of all unexpended portions of the advanced dollar funds not obligated under the contract for a legally binding transaction. If appropriate, the contractor shall also make a repayment to the mission of all unexpended portions of the advanced local currency funds not otherwise obligated under the contract for a legally binding transaction. In the event there are any outstanding obligations at the time of filing the final voucher required by the "Allowable Cost and Payment" clause, a subsequent accounting pertaining thereto will be made in the same manner as required by said provisions.

(d) Refund of excess funds. (1) If all costs have been settled under the contract and the contractor fails to comply with the Contracting Officer's request for repayment of excess advance funds, the Government shall have the right, on other agreements, grants, or contracts held with the contractor, to withhold payment of advances and/or reimbursements due the contractor in the amount of the excess being held by the contractor.

(2) If the contractor is still holding excess advance funds under the contract and the work has been completed or terminated but all costs have not been settled, the contractor agrees to:

(i) Provide within 30 days after requested to do so by the contracting officer, a breakdown of the dollar amounts which have not been settled between the Government and the contractor. (The Contracting Officer will assume no costs are in dispute if the contractor fails to reply within 30 days);

(ii) Upon written request of the Contracting Officer, return to the Government the sum of dollars, if any, which represents the difference between: (A) The contractor's maximum position on claimed costs which have not been reimbursed and (B) the total amount of unexpended funds which have been advanced under the contract; and

(iii) If the contractor fails to comply with the Contracting Officer's request for repayment of excess advance funds, the Government shall have the right on other agreements, grants, or contracts held with the contractor, to withhold payment of advances and/or withhold reimbursement due the contractor in the amount of the excess being held by the contractor.

(e) The contractor agrees that all interest earned on funds advanced will be promptly repaid to the Government. At no time may any such interest be retained by the contractor or used for any purpose.

§ 7-7.5503-3 Federal Reserve letter of credit.

If an advance of funds is to be made by means of a Federal Reserve letter of credit, insert the clause set forth in AIDPR 7-30.5002.

[38 FR 15602, June 14, 1973, as amended at 47 FR 25966, June 16, 1982]

§ 7-7.5503-4 Negotiated overhead rates—predetermined.

If predetermined overhead rates have been established, substitute the following clause for the clause set forth in § 7-7.5501-9.

NEGOTIATED OVERHEAD RATES—PREDETERMINED (MAY 1981)

(a) Notwithstanding the provisions of the clause of this contract entitled "Allowable Cost and Payment", the allowable indirect cost under this contract shall be obtained by applying predetermined overhead rates to bases agreed upon by the parties, as specified below.

(b) The contractor, as soon as possible but not later than 3 months after the close of each of his fiscal years during the term of this contract, shall submit to the Contracting Officer with copies to the cognizant audit activity, the AID Inspector General, and the AID Overhead and Special Cost Branch, a proposed predetermined overhead rate or rates based on the contractor's actual cost experience during that fiscal year, together with supporting cost data. Negotiation of predetermined overhead rates by the contractor and the Contracting Officer shall be undertaken as promptly as practicable after receipt of the contractor's proposal.

(c) Allowability of costs and acceptability of cost allocation methods shall be determined in accordance with the provisions of Subpart 1-15.3 (Contracts with Educational Institutions) of the Federal Procurement Regulations as in effect on the date of this contract.

(d) Predetermined rates appropriate for the work under this contract, in effect on the effective date of this contract shall be incorporated into the contract schedule. Rates for subsequent periods shall be negotiated and the results set forth in a written overhead rate agreement executed by both parties. Such agreement shall be automatically incorporated into this contract upon execution and shall specify: (1) The agreed predetermined overhead rates, (2) the bases to which the rates apply, (3) the fiscal year unless the parties agree to a different period for which the rates apply, and (4) the specific items treated as direct costs or any changes in the items previously agreed to be direct costs. The overhead rate agreement shall not change any monetary ceiling, contract obligation, or specific cost allowance or disallowance provided for in this contract.

(e) Pending establishment of predetermined overhead rates for any fiscal year or different period agreed to by the parties, the contractor shall be reimbursed either at the rates fixed for the previous fiscal year or other period or at billing rates acceptable to the Contracting Officer subject to appropriate adjustment when the final rates for that fiscal year or other period are established.

(f) Any failure by the parties to agree on any predetermined overhead rate or rates under this clause shall not be considered a dispute within the meaning of the "Disputes" clause of this contract. If for any fiscal year or other period specified in the schedule of this contract the parties fail to agree to a predetermined overhead rate or rates, it is agreed that the allowable indirect costs under this contract shall be obtained by applying negotiated final overhead rates in accordance with the terms of the "Negotiated Overhead Rates—Postdetermined" clause set forth in § 7-7.5501-9 of the AID procurement regulations as in effect on the date of this contract.

[38 FR 15602, June 14, 1973, as amended at 38 FR 28676, Oct. 16, 1973; 41 FR 4924, Feb. 3, 1976; 46 FR 31889, June 18, 1981]

§ 7-7.5503-5 Organizational conflicts of interest.

Insert the clause set forth in AIDPR 7-7.5003-12.

[46 FR 10915, Feb. 5, 1981]

§ 7-7.5503-6 Changes.

CHANGES (JUNE 1973)

(a) The Contracting Officer may at any time, by a written order, and without notice to the sureties, if any, make changes, within the general scope of this contract, in the definition of services and tasks to be performed, and the time (i.e., hours of the day, days of the week, etc.) and place of performance thereof.

(b) If any such changes cause an increase or decrease in the estimated cost of, or the time required for, the performance of any part of the work under this contract, whether changed or not changed by any such order, or otherwise affects any other provision of this contract, an equitable adjustment shall be made:

(1) In the estimated cost or delivery schedule, or both; and

(2) In such other provisions of the contract as may be so affected, and the contract shall be modified in writing accordingly. Any claim by the contractor for adjustment under this clause must be asserted within 30 days from the date of receipt by the contractor of the notification of change; provided, however, that the Contracting Officer, if he decides that the facts justify such action, may receive and act upon any such claim asserted at any time prior to final payment under this contract. Failure to agree to any adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes". However, except as provided in paragraph (c) of this section, nothing in this clause shall excuse the contractor from proceeding with the contract as changed.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the estimated cost of this contract and, if this contract is incrementally funded, the funds allotted for the performance thereof, shall not be increased or deemed to be increased except by specific written modification of the contract indicating the new contract estimated cost and, if this contract is incrementally funded, the new amount allotted to the contract. Until such modification is made, the contractor shall not be obligated to continue performance or incur costs beyond the point established in the clause of this contract entitled "Limitation of Cost" or "Limitation of Funds."

§ 7-7.5503-7 Security requirements.

If the contractor or any of his personnel will have access to classified or administratively designated information, insert the following clause:

SECURITY REQUIREMENTS (JUNE 1973)

(a) Whenever the Contracting Officer or his authorized representative has assigned a security classification (confidential, secret, or top secret) or administrative designation (limited official use) to the Contract or any of the items handled under the Contract, the Contracting Officer or his authorized representative shall notify the contractor (1) in writing of administrative designations, or (2) by use of "Security requirements check list" (Form DD 254) for classified information and any subsequent revisions in such classification.

(b) The contractor shall safeguard all classified and administratively designated items handled under this contract and shall provide and maintain a system of security controls within his own organization. For classified information the system of security controls shall be in accordance with Department of Defense security agreement (DD Form 441), including the DOD industrial security manual for safeguarding classified information (DOD 5520.22-M). Instructions for safeguarding of administratively designated information are provided in Uniform State/AID/USIA regulations (volume 5, Foreign Affairs Manual, chapter 900), a copy of which will be furnished by the Contracting Officer or Mission Director.

(c) Representatives of the Department of Defense and/or AID having security cognizance over the facility shall have the right to inspect at reasonable intervals the procedures, methods, and facilities utilized by the contractor in complying with the security requirements under this contract. Should the Government, through these representatives, determine that the contractor is not complying with the security requirements of this contract, the contractor shall be informed in writing by the cognizant security office of the Department of Defense and/or AID of the proper action to be taken in order to effect compliance with such requirements.

(d) The contractor agrees to notify the Contracting Officer in writing after completion of the work under this contract that: (1) All classified or administratively designated information which was in his possession during the performance of the contract has been disposed of in accordance with existing DOD and/or AID security requirements, or (2) no classified or administratively designated information came into his possession or any of his employee's possession during the performance of the contract.

(e) Notwithstanding the above, no material shall be published which would violate the security regulations or be in conflict with the national security of the United States and/or the cooperating government.

[38 FR 15602, June 14, 1973, as amended at 38 FR 28676, Oct. 16, 1973]

§ 7-7.5503-8 Patent rights.

Insert the appropriate clause set forth in FPR 1-9.107-5 or 1-9.107-6, under its conditions stated in FPR 1-9.107-4.

[41 FR 4924, Feb. 3, 1976]

§ 7-7.5503-9 Care of laboratory animals.

Insert the clause set forth in AIDPR 7-7.5003-2 under the conditions contained therein.

[39 FR 21132, June 19, 1974]

§ 7-7.5503-10 Family planning and population assistance activities.

Insert the clause set forth in AIDPR 7-7.5003-3 under the conditions contained therein.

[40 FR 16206, Apr 10, 1975, as amended at 43 FR 15628, Apr. 4, 1978]

§ 7-7.5503-11 Privacy Act.

Insert the clause set forth in FPR 1-1.327-5(c) under the conditions set forth therein.

[42 FR 4843, Jan. 26, 1977]

§ 7-7.5503-12 Local cost financing with U.S. dollars.

Insert the clause in § 7-6.5104 under the conditions specified therein.

[45 FR 44287, July 1, 1980]

§ 7-7.5503-13 Protection of the individual as a research subject.

Insert the clause set forth in AIDPR 7-7.5003-8.

[45 FR 44282, July 1, 1980]

§ 7-7.5503-14 Women-owned business concerns subcontracting program.

Insert the clause entitled "Women-Owned Business Concerns Subcontracting Program (Over $500,000 or $1,000,000 for Construction of any Public Facility)" specified in OFPP Policy Letter 80-4, as contained in Attachment A of FPR Temporary Regulation 54.

[45 FR 44282, July 1, 1980]

PART 7-8—TERMINATION OF CONTRACTS

Subpart 7-8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price Type and Cost Reimbursement Type Contracts

Sec.
7-8.201 General.
7-8.211 Review and approval of proposed settlements.
7-8.211-1 Settlement Review Boards.
7-8.211-2 Required review and approval.
7-8.211-4 Action by Board.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

SOURCE: 30 FR 12978, Oct. 12, 1965, unless otherwise noted.

Subpart 7-8.2—General Principles Applicable to the Termination for Convenience and Settlement of Fixed-Price Type and Cost Reimbursement Type Contracts

§ 7-8.201 General.

The Foreign Aid and Related Agencies Appropriation Act, 1963, and subsequent appropriation Acts, have imposed the following requirement:

None of the funds appropriated or made available pursuant to this Act for carrying out the Foreign Assistance Act of 1961, as amended, may be used for making payments on any contract for procurement to which the United States is a party entered into after the date of enactment of this Act which does not contain a provision authorizing the termination of such contract for the convenience of the United States.

See, for example, section 110 of the Foreign Assistance and Related Agencies Appropriation Act, 1965.

§ 7-8.211 Review and approval of proposed settlements.

[36 FR 23556, Dec. 10, 1971]

§ 7-8.211-1 Settlement Review Boards.

(a) The AID Settlement Review Board shall operate in accordance with the standards set forth in FPR 1-8.211 and shall be composed of the following members or their delegates (except as provided under § 7-8.211-2(b) of this section:

Assistant Administrator for Program and Management Services Controller
General Counsel

(b) The Assistant Administrator for Program and Management Services or his delegate shall be designated as Chairman of the Board. Delegate members of the Board shall have broad business and contracting experience and shall be senior AID officials. Each member or his delegate must be in attendance in order to conduct business and the Board shall act by majority vote. No individual shall serve as a member of a Board for the review of a proposed settlement if he has theretofore reviewed, approved or disapproved or recommended approval, disapproval or other action with respect to any substantive element of such settlement proposal.

(c) The Chairman of the Board shall appoint a nonvoting recorder who shall be responsible for receiving cases, scheduling and recording the proceedings at meetings, maintaining a log of all cases received by him for the Board, and other duties as assigned by the Board.

[36 FR 23556, Dec. 10, 1971, as amended at 38 FR 28676, Oct. 16, 1973]

§ 7-8.211-2 Required review and approval.

(a) *When required.* The AID Settlement Review Board shall receive and

approve all AID/W and Mission proposed settlements or determinations described under FPR 1-8.211-2(a).

(b) *Level of review.* Proposed settlements in excess of $1 million described in FPR 1-8.211-2(b) shall be reviewed and approved by a Board consisting of the Assistant Administrator for Program and Management Services, the General Counsel, and the Controller, without power of redelegation.

(c) *Submission of information.* The Contracting Officer shall submit the information required under FPR 1-8.211-2 (c) in triplicate to the Office of Contract Management, Attention: Recorder, AID Settlement Review Board.

[36 FR 23556, Dec. 10, 1971, as amended at 38 FR 28676, Oct. 16, 1973]

§ 7-8.211-4 Action by Board.

For purposes of this section, the phrase "within 30 days after submission to the board" found in FPR 1-8.211-4 shall mean within 30 days after receipt by the Board Recorder of all information required pursuant to FPR 1-8.211-2(c).

[36 FR 23557, Dec. 10, 1971]

PART 7-10—BONDS AND INSURANCE

Subpart 7-10.1—Bonds

Sec.
7-10.106 Advance payment bonds.

Subpart 7-10.3—Insurance—General

7-10.302 Notice of cancellation or change.
7-10.305 Procedures to be followed in the event of loss or damage to Government property.

Subpart 7-10.4—Insurance Under Fixed-Price Contracts

7-10.402 Workmen's compensation insurance overseas.

Subpart 7-10.5—Insurance Under Cost-Reimbursement Type Contracts

7-10.502 Types of insurance.
7-10.502-1 Workmen's compensation and employers' liability insurance.
7-10.502-3 Liability insurance for operation of motor vehicles.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

SOURCE: 30 FR 12979, Oct. 12, 1965, unless otherwise noted.

Subpart 7-10.1—Bonds

§ 7-10.106 Advance payment bonds.

(a) Generally, advance payment bonds will not be required in connection with AID contracts containing an advance payment provision. In lieu thereof, Contracting Officers will follow procedures set forth in Federal Procurement Regulations § 1-30.413.

(b) Whenever a Contracting Officer considers that an advance payment bond is necessary, the Contracting Officer will: (1) Establish a bond penalty that will adequately protect interests of the Government, (2) use the AID Advance Payment Bond format, (3) place bond with a surety currently approved by the U.S. Treasury Department according to the latest Treasury Department Circular 570, (4) stipulate that the cost of the bond shall not exceed a rate of $7.50 per $1,000 per annum based on the penalty of the bond, without the prior written approval of the Insurance Advisor, Office of Contract Management.

(c) Where the surety's obligation under an advance payment bond covers all advances made to the contractor during the term of the contract, no release should be issued to the surety until all advances made and to be made under the contract have been fully liquidated in accordance with the provisions of the contract, such as no-pay vouchers, reports of expenditures, or by refund. See, e.g., FPR 1-30.414-2 (d), (e), and (k), and AIDPR 7-30.4502 C.(3), D.7, D.8 and E. Where the surety's obligation under the bond is limited to advances made during a specified period of time, no release should be issued to the surety until all advances made and to be made during the specified period have been liquidated as aforesaid.

[35 FR 3808, Feb. 27, 1970, as amended at 36 FR 23557, Dec. 10, 1971; 38 FR 12807, May 16, 1973; 38 FR 28676, Oct. 16, 1973]

Subpart 7-10.3—Insurance—General

§ 7-10.302 Notice of cancellation or change.

All policies required by AID will provide that in the event of cancellation or change in policy coverage thirty days prior written notice will be given to the cognizant Contracting Officer. The Contracting Officer will, in turn, notify the Insurance Advisor, Office of Contract Management.

[30 FR 12979, Oct. 12, 1965, as amended at 32 FR 8469, June 14, 1967; 38 FR 12807, May 16, 1973; 38 FR 28676, Oct. 16, 1973]

§ 7-10.305 Procedures to be followed in the event of loss or damage to government property.

The Contractor must properly report all the circumstances of loss promptly to the Contracting Officer and advise whether any parties other than the Contractor were responsible and what steps have been taken to recover from them. The Contractor will protect government subrogation rights.

Subpart 7-10.4—Insurance Under Fixed-Price Contracts

§ 7-10.402 Workmen's compensation insurance overseas.

(a) In lieu of the clause prescribed in FPR 1-10.402(a), the following clause will be used:

WORKMEN'S COMPENSATION INSURANCE (DECEMBER 1977)

(1) The contractor, before commencing performance under this contract, shall provide and thereafter maintain such workmen's compensation insurance or security as is required by the Defense Base Act (DBA) as amended (42 U.S.C. 1651 et seq.).

(2) The contractor agrees to procure DBA insurance coverage requirements pursuant to the contract between AID and its insurance carrier unless: The contractor has a DBA self insurance program approved by the Department of Labor; has an approved retrospective rating plan for DBA; or has entered into a long-term agreement for DBA coverage with an underwriter or agent prior to November 14, 1977. However, if it would be economical to cancel the long-term coverage and pay short-term rates, the contractor is required to do so.

(3) If the contractor secures a waiver of DBA coverage for its employees who are not citizens of the United States, residents of, or hired in the United States, or AID has secured such a waiver, the contractor agrees to comply with the conditions of such waiver.

(4) The contractor further agrees to insert in all subcontracts hereunder to which the DBA is applicable, a clause similar to this clause, including this sentence, imposing on all such subcontractors a like requirement to provide overseas workmen's compensation insurance coverage and obtain DBA coverage under the AID requirements contract.

(b) Upon the recommendation of the AID Administrator, the Secretary of Labor may waive the applicability of the DBA with respect to any contract, subcontract, or subordinate contract, work location, or classification of employees. Either the contractor or AID can request a waiver from coverage. Such a waiver can apply to any employees who are not U.S. citizens, not residents of, or not hired in the United States. Waivers requested by the contractor are submitted to the contracting officer for approval and further submission to the Department of Labor, which grants the waiver. Application for a waiver is submitted on Labor Department Form BEC 565. AID has a number of blanket waivers already in effect for certain countries that are applicable to its direct contracts with contractors performing in such countries. Where such waivers are granted from coverage under the DBA, the waiver is conditioned on providing other workmen's compensation coverage to employees to which the waiver applies. Usually this takes the form of securing workmen's compensation coverage of the country where work will be performed or of the country of the employee's nationality, whichever offers greater benefits. Copies of AID secured waivers should be made available for review by contractors. Contracting officers are responsible for advising contractors of applicable AID secured waivers. As of July 31, 1979, the Department of Labor has granted partial blanket waivers of Defense Base Act coverage for the countries listed below. The waivers are applicable to AID-financed contracts performed in the listed coun-

tries, and are subject to two conditions:

(1) Employees hired in the United States by the Contractor, and citizens or residents of the United States are to be provided Defense Base Act insurance coverage:

(2) Waived employees (i.e., foreign nationals hired outside the United States) will be provided worker's compensation benefits prescribed in the applicable foreign laws as the contract requires. Countries for which waivers are in effect are:

1. Afghanistan
2. Bahamas
3. Bangladesh
4. Barbados
5. Benin
6. Bolivia
7. Botswana
8. Brazil
9. Burundi
10. Cameroon
11. Chad
12. Chile
13. Colombia
14. Costa Rica
15. Djibouti
16. Dominica
17. Dominican Republic
18. Ecuador
19. Egypt
20. El Salvador
21. Ethiopia
22. Fiji
23. Gambia
24. Ghana
25. Guatemala
26. Guinea
27. Guinea-Bissau
28. Guyana
29. Haiti
30. Honduras
31. Indonesia
32. Israel
33. Italy
34. Ivory Coast
35. Jamaica
36. Jordan
37. Kenya
38. Korea
39. Lebanon
40. Lesotho
41. Liberia
42. Madagascar
43. Malawi
44. Mali
45. Mauritania
46. Mauritius
47. Mexico
48. Morocco
49. Nepal
50. New Caledonia
51. Nicaragua
52. Niger
53. Nigeria
54. Oman
55. Panama
56. Papua New Guinea
57. Paraguay
58. Peru
59. Philippines
60. Portugal
61. Rwanda
62. St. Vincent
63. Senegal
64. Seychelles
65. Sierra Leone
66. Sinai Support Mission
67. Somalia
68. Sri Lanka
69. Sudan
70. Swaziland
71. Syria
72. Tanzania
73. Thailand
74. Togo
75. Tonga
76. Tunisia
77. Uganda
78. Upper Volta
79. Uruguay
80. Western Samoa
81. Yemen Arab Republic
82. Zaire
83. Zambia
84. Zimbabwe

(c) To assist contractors in securing insurance at minimal rates for the workmen's compensation insurance required under the DBA, and to facilitate meeting insurance requirements for such coverage, AID, after open and competitive negotiation, has entered into a contract with an insurance carrier to provide such coverage at a specified rate. The terms of this contract require the insurance carrier to provide coverage, and the contractor to make payments to and handle its claims with that insurance carrier. Contracting officers are responsible for explaining and advising contractors of the details of securing such insurance.

(d) The clause specified in AIDPR 7-10.402(a) shall be included in all contracts entered into by AID, and in any subcontracts thereunder, where services by a contractor's employee will be performed outside the United States or the District of Columbia, regardless of duration of such services.

[43 FR 15628, Apr. 14, 1978, as amended at 45 FR 44282, July 1, 1980; 46 FR 31889, June 18, 1981; 47 FR 13146, Mar. 29, 1982]

Subpart 7-10.5—Insurance Under Cost-Reimbursement Type Contracts

§ 7-10.502 Types of insurance.

§ 7-10.502-1 Workmen's compensation and employers' liability insurance.

AIDPR 7-10.402 applies to cost-reimbursement as well as to fixed-price contracts.

§ 7-10.502-3 Liability insurance for operation of motor vehicles.

If a Contractor or any of its employees or their dependents transport or cause to be transported privately owned motor vehicles to a cooperating country, or they or any of them purchase a motor vehicle within a cooperating country, the Contractor must give assurance that adequate liability coverage is provided and kept in force. Before such a motor vehicle is operated in a cooperating country, and whenever requested, the Contractor will provide the Mission Director, or his designee, with satisfactory evidence of such coverage by an insurance carrier satisfactory to him. Coverage will be for amounts equal in dollars or currency of the cooperating country to not less than $10,000/$20,000 for personal injury and $5,000

for property damage, or equal to not less than such minimums as the Mission Director may prescribe from time to time. The cost of such insurance is not reimbursable.

[30 FR 12979, Oct. 12, 1965. Redesignated at 42 FR 4843, Jan. 26, 1977]

PART 7-12—LABOR

Subpart 7-12.1—Basic Labor Policies

Sec.
7-12.101 Labor relations.
7-12.101-1 General.
7-12.101-1.50 Employment of third country nationals (TCN's) and cooperating country nationals (CCN's).
7-12.102 Overtime, extra-pay shifts, and multi-shift work.
7-12.102-1 Definitions
7-12.102-1.50 Additional definitions.
7-12.102-1.51 Compensatory time off.
7-12.102-2 Policy.
7-12.102-4 Approvals.

Subpart 7-12.8—Equal Opportunity in Employment

7-12.805-50 Administration by AID.
7-12.805-51 Introduction.
7-12.805-52 EEO clearance requirements.
7-12.805-53 Clearance procedures.

Subpart 7-12.51—Security Clearance

7-12.5100 General.
7-12.5101 Contract provision.
7-12.5102 AID Directives.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

SOURCE: 30 FR 12979, Oct. 12, 1965, unless otherwise noted.

Subpart 7-12.1—Basic Labor Policies

§ 7-12.101 Labor relations.

§ 7-12.101-1 General.

§ 7-12.101-1.50 Employment of third country nationals (TCN's) and cooperating country nationals (CCN's).

(a) *General.* It is AID policy that cooperating country nationals (CCN's) and third country nationals (TCN's), who are hired abroad for work in a cooperating country under AID-direct contracts, generally be extended the same benefits, and be subject to the same restrictions as TCN's and CCN's employed as direct hires by the AID Mission. Exceptions to this policy may be granted either by the Mission Director or the Assistant Administrator having program responsibility for the project. (TCN's and CCN's who are hired to work in the United States shall be extended benefits and subject to restrictions on the same basis as U.S. citizens who work in the United States.)

(b) *Compensation.* Compensation, including merit or promotion increases paid to TCN's and CCN's may not, without the approval of the Mission Director or the Assistant Administrator having program responsibility for the project, exceed the prevailing compensation paid to personnel performing comparable work in the cooperating country as determined by the AID Mission. Unless otherwise authorized by the Mission Director or the Assistant Administrator having program responsibility for the project, the compensation of such TCN and CCN employees shall be paid in the currency of the cooperating country.

(c) *Allowances and differentials.* TCN's and CCN's, hired abroad for work in a cooperating country, are not eligible for allowances or differentials under AID-direct contracts, unless authorized by the Mission Director or the Assistant Administrator having program responsibility for the project.

(d) *Country and security clearances.* The Contractor shall insure that the necessary clearances, including security clearances, if required, have been obtained for TCN and CCN employees in accordance with any such requirements set forth in the contract or required by the AID Mission, prior to the TCN or CCN starting work under the contract.

(e) *Physical fitness.* Contractors are required to insure that prospective TCN and CCN employees are examined prior to employment to determine whether the prospective employee meets the minimum physical requirements of the position and is free from any contagious disease.

(f) *Workweek, holidays, and leave.* The workweek, holidays, and leave for TCN and CCN employees shall be the same as for all other employees of the contractor, under the terms of the

contract; however, TCN and CCN employees are not eligible for home leave or military leave unless authorized by the Mission Director or the Assistant Administrator having program responsibility for the project.

(g) *Travel and transportation for TCN's and CCN's.* Travel and transportation shall be provided TCN and CCN employees on the same basis as for all other employees of the contractor, under the terms of the contract.

(h) *Household effects and motor vehicles.* AID will not provide household effects to TCN and CCN employees; such employees may ship their household effects and motor vehicles to their place of employment on the same basis as for all other employees of the contractor, under the terms of the contract unless they are residents of the cooperating country.

[46 FR 51917, Oct. 23, 1981]

§ 7-12.102 Overtime, extra-pay shifts, and multi-shift work.

§ 7-12.102-1 Definitions.

§ 7-12.102-1.50 Additional definitions.

§ 7-12.102-1.51 Compensatory time off.

"Compensatory time off" means leave equal to overtime worked, which, unless otherwise authorized in a contract or approved by a Contracting Officer, must be taken not later than the end of the calendar month following that in which the overtime is worked.

§ 7-12.102-2 Policy.

Most contracts covered by this regulation call for the performance of professional or technical services overseas on a cost-reimbursement basis. The compensation for employees performing such services is normally fixed on a monthly or annual basis, and the contracts usually state minimum work week hours. It is not expected that these employees will receive additional pay, overtime or shift premiums, or compensatory time off. When the Contracting Officer determines it is in the best interest of the Government, specific provision may be made in contracts to permit such benefits for non-technical and non-professional employees serving overseas, subject to approvals to be required in the contract.

§ 7-12.102-4 Approvals.

The heads of procuring activities and the chiefs of contract offices in AID/ Washington procuring activities may make the determinations referred to in FPR 1-12.102-4.

Subpart 7-12.8—Equal Opportunity in Employment

AUTHORITY: Sec. 621, Pub. L. 87-195, 75 Stat. 424, as amended (22 U.S.C. 2381), unless otherwise noted.

SOURCE: 45 FR 54755, July 18, 1980, unless otherwise noted.

§ 7-12.805-50 Administration by AID.

§ 7-12.805-51 Introduction.

Executive Order 12086 consolidated the compliance responsibility for equal employment opportunity programs, which had previously been assigned to selected, designated compliance agencies, in the Department of Labor. The Department of Labor assumed full responsibility for verification of contractor's compliance with EEO requirements. Since there is no longer a compliance officer in AID, contracting officers will now obtain verification of contractor compliance directly from the cognizant Regional Office of Federal Contract Compliance Programs (OFCCP) in accordance with the procedures in § 7-12.805-53.

§ 7-12.805-52 EEO clearance requirements.

(a) *General.* AID will not award a contract to a firm or institution unless it complies with EEO requirements.

(b) *Contracts for $1,000,000 or more.* For contracts with an estimated total value over the life of the contract of $1,000,000 or more, formal verification of compliance shall be obtained from the cognizant regional OFCCP in accordance with the procedures in paragraphs (a), (b), and (d) of § 7-12.805-53.

(c) *Contracts over $10,000, but less than $1,000,000.* Contracts with an estimated total value over the life of the contract of more than $10,000, but less

than $1,000,000 do not require formal verification of compliance from OFCCP. Compliance shall be determined in accordance with the procedures in paragraphs (a), (c), and (d) of § 7-12.805-53.

(d) *Contract amendments.* Any amendment which increases the total estimated value of a contract to $1,000,000 or more, or any amendment which is itself $1,000,000 or more, requires formal verification of compliance from the cognizant regional OFCCP, i.e., the regional office responsible for the geographic area where the work is to be performed, in accordance with the procedures in § 7-15.805-53(b). For other amendments, the method of verification of compliance is at the discretion of the contracting officer (see § 7-12.805-53 (c) and (d)(3)); formal verification is not required.

§ 7-12.805-53 Clearance procedures.

(a) *General.* (1) A completed and signed Representations, Certifications, and Acknowledgements (AID Form 1410-13), and a satisfactory Minority and Women Representation on Overseas Team Agreement, as required by AID Form 1410-13, are required for all AID contracts over $10,000. The Representations, Certifications, and Acknowledgements (Reps. and Certs.) and (when applicable) the Minority and Women Representation on Overseas Team Agreement (O/S Team Agreement) must be reviewed by the contracting officer when received to determined that they have been completed and signed as required, and are acceptable. Acceptable Reps. and Certs. and O/S Team Agreement are the first step in the EEO clearance process.

(2) If the Reps. and Certs. or O/S Team Agreement are not deemed acceptable on technical grounds (e.g. incomplete, not signed, etc.) the contracting officer must decide if they can be made acceptable within a reasonable period by corrective action on the part of the offeror, or if the fault is such that it renders the offer nonresponsive. In the first case, necessary corrective action should be taken; in the second case, negotiations with the non-responsive offeror will be terminated. If the Reps. and Certs. or O/S Team Agreement raise questions concerning EEO compliance, and this would be the basis for finding the offeror non-responsive, the matter must be referred to OFCCP regardless of the estimated value of the contract; only OFCCP may make determination of non-compliance with EEO requirements.

(b) *Contracts for $1,000,000 or more.* Contracts and amendments with an estimated value of $1,000,000 or more must have OFCCP verification of EEO compliance before award (see § 7-12.805-52). This verification shall be obtained by:

(1) Getting completed, signed, Reps. and Certs. and (when applicable) the O/S Team Agreement from the offeror (see § 7-12.805-53(a)).

(2) Contacting the cognizant Regional OFCCP for verification of EEO compliance.

(i) OFCCP may require 30 days lead time for verification if a compliance study is required. This should be considered in the procurement planning process.

(ii) The contracting officer may make initial inquiry to OFCCP by telephone, and telephone verification of EEO compliance may be used in making an award; however, the inquiry and verification must be confirmed in writing.

(iii) The following information is normally required by OFCCP:

(A) The offeror's full name and address;

(B) Name, title, address, and telephone number of a contact person for the prospective contractor;

(C) A description of the type of organization (university, nonprofit, etc.) and its ownership (private, foreign, state, etc.).

(D) Names and addresses of organizations in joint venture (if any); names and addresses of subcontractors (if any).

(E) Type of procurement (new contract—RFP or IFB, amendment, etc.) and estimated dollar amount, and term.

(F) Copy of approved Reps. and Certs. and O/S Team Agreement. In the initial contact with OFCCP, the contracting officer and OFCCP should

mutually determine what information is to be included in the written verification request. In the event that OFCCP reports that the offeror is not in compliance, negotiations with the offeror shall be terminated.

(c) *Contracts over $10,000, but less than $1,000,000.* Contracts and amendments within this range do not require formal verification by OFCCP (see § 7-12.805-52). The method used to verify compliance is at the discretion of the contracting officer. The contracting officer may rely on the documentation submitted by the offeror (the Reps. and Certs. and O/S Team Agreement—see § 7-12.805-53(a)), unless he or she is aware of some reason to doubt the documentation submitted. In case of doubt, then an informal check with OFCCP should be made. In the event that evidence of non-compliance is developed, the contracting officer must contact OFCCP for confirmation of EEO status; only OFCCP may determine non-compliance with EEO requirements. If OFCCP confirms non-compliance, negotiations with the offeror contractor shall be terminated.

(d) *Documentation for the contract file.* (1) Every contract file must contain completed signed Reps. and Certs. and (when applicable) the O/S Team Agreement. The file must clearly show that these documents have been reviewed and accepted by the contracting officer. If the Reps. and Certs. or O/S Team Agreement were revised to make them acceptable (see § 7-12.805-53(a)), the file must show what changes were required and certify that the changes were made.

(2) For contracts or amendments of $1,000,000 or more, the file must contain:

(i) A record of the initial contact with OFCCP, specifying the name, address, and telephone number of the person contacted, a summary of the information presented, and the advice given by OFCCP;

(ii) A copy of the written follow-up request for EEO compliance verification to OFCCP; and

(iii) A copy of the compliance verification from OFCCP.

(3) For contracts or amendments over $10,000 but less than $1,000,000, the file must contain a memorandum from the contracting officer stating that the contractor is considered in compliance with EEO requirements, and giving the basis for this statement (see § 7-12.805-53(c)).

(4) Documentation in the event of non-compliance. In the event that OFCCP determines that a prospective contractor is not in compliance, a copy of OFCCP's written determination, and a summary of resultant action taken (termination of negotiations, notification of offeror and project officer, negotiation with next offeror in competitive range, re-solicitation, etc.) will be placed in the contract file for any contract which may result, together with other records related to unsuccessful offers, and retained for at least six months following award.

Subpart 7-12.51—Security Clearance

§ 7-12.5100 General.

The Foreign Assistance and Related Agency Appropriation Act, 1966, imposes the following requirement:

None of the funds appropriated or made available by this or any predecessor Act for the year subsequent to fiscal year 1962 for carrying out the Foreign Assistance Act of 1961, as amended, may be used on or after 60 days from the date of enactment of this Act to make payments with respect to any contract for the performance of services outside the United States by U.S. citizens unless the President shall have promulgated regulations that provide for the investigation of such citizens for loyalty and security to the extent necessary to protect the security and other interests of the United States: *Provided*, That such regulations shall require that any such U.S. citizen who will have access, in connection with the performance of such services, to information or material classified for security reasons shall be subject to such investigation as may otherwise be provided by law and executive order.

[31 FR 11030, Aug. 19, 1966]

§ 7-12.5101 Contract provision.

AID contracts provide for necessary approvals of contract personnel.

§ 7-12.5102 AID Directives.

(a) Regulations have been issued under the statutory provision cited in AIDPR 7-12.5100 and are set out in

AID Regulation 10, published in Part 210, Title 22 of the Code of Federal Regulations.

(b) See also AID Handbook 6, Security.

[31 FR 11030, Aug. 19, 1966, as amended at 41 FR 4924, Feb. 3, 1976]

PART 7-15—CONTRACT COST PRINCIPLES AND PROCEDURES

Subpart 7-15.1—Applicability

Sec.
7-15.107 Advance understandings on particular cost items.

Subpart 7-15.2—Contracts With Commercial Organizations

7-15.205 Selected costs.
7-15.205-6 Compensation for personal services.
7-15.205-46 Travel costs.
7-15.205-46.50 Special restrictions.
7-15.205-46.51—7-15.205-46.52 [Reserved]
7-15.205-46.53 International travel.

Subpart 7-15.3—Contracts With Educational Institutions

7-15.303-50 Predetermined fixed rates for indirect costs.
7-15.303-51 Compensation for personal services.

Subpart 7-15.6—Contracts with Nonprofit Organizations

7-15.603-50 OMB Circular A-122; AID implementation.
7-15.603-2.50 Compensation for personal services.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

Subpart 7-15.1—Applicability

§ 7-15.107 Advance understandings on particular cost items.

(a) The General Provisions of AID contracts generally enumerate the rules and principles governing the reimbursement of compensation, travel, transportation and a number of "fringe benefit" costs associated with overseas operations.

(b) However, as a substitute for, or in addition to, the General Provisions, an agreement setting forth advance understandings on selected costs may be negotiated with Agency contractors by the Overhead and Special Cost Branch, Support Division, Office of Contract Management. Such advance understandings will be applicable to all contracts with that contractor.

[38 FR 28676, Oct. 16, 1973]

Subpart 7-15.2—Contracts With Commercial Organizations

§ 7-15.205 Selected costs.

[30 FR 12981, Oct. 12, 1965]

§ 7-15.205-6 Compensation for personal services.

(a) *General.* (1) Specific limitations on compensation for personal services, including fringe benefits, may be spelled out or incorporated by reference in AID contracts. Where the provisions of the contract are inconsistent with this section, such provisions will govern.

(2) Direct compensation of personnel will be reimbursable, in accordance with the contractor's established policies and procedures and FPR 1-15.205-6 except as provided in paragraphs (b) through (j) of this section. Such policies, procedures, and practices shall be the same as used in contracts and grants with other Government agencies and accepted by the U.S. Government agency assigned primary audit responsibility for the contractor, shall be in writing, and shall be made available to the contracting officer or his designated representative, upon request.

(3) Overseas recruitment incentive.

(i) Contract employees serving overseas under a contract who do not qualify, request, and receive an exemption for overseas income provided under section 911 of the U.S. Internal Revenue Code (26 U.S.C. 911) are eligible to receive an overseas recruitment incentive, provided that the average incentive for all such employees does not exceed 10 percent of the initial base annual salary of all employees eligible for the incentive under the contract.

(ii) The overseas recruitment incentive is payable under one of the following alternative methods:

(A) As a lump-sum amount after the eligible employee has completed his

tour of duty in the Cooperating Country under a contract, and has furnished to the contractor a Certification that he does not qualify, and will not apply for an exemption from overseas income as provided by 26 U.S.C. 911 (the contractor shall retain such Certifications for post-audit); or

(B) At the option of the contractor, the overseas recruitment incentive may be paid in increments during an employee's tour of duty; provided however, that payments made by the contractor to employees who become eligible for an exemption from overseas income as provided by 26 U.S.C. 911, which payments were reimbursed by AID under the contract, shall be refunded to AID; and provided further, that neither the contractor's (nor the subcontractor's) inability to collect refunds from ineligible employees shall be used as a basis to excuse subsequent refunds by the contractor to AID.

(iii) If the overseas recruitment incentive causes the employee's salary to exceed the FSR-1 level, contracting officer approval must be obtained.

(b) *Salaries and wages.* (1) Salaries and wages exclude overseas differential and other allowances associated with overseas service but include payments for personal services (including fees and honoraria) computed on a daily rate or other time basis different from an annual rate. Daily rates of compensation are computed on the basis of a 260-day work year made up to 5-day (8 hour) work weeks.

(2) Any compensation (i.e., the employee's or consultant's base annual salary plus overseas recruitment incentive, if any) which exceeds the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1 as set forth in the payment schedule of the Uniform State/AID/USIA Regulations, as from time to time amended, will be reimbursed only with the written approval of the contracting officer. Contracting officer approval of salaries in excess of the maximum payable rate for a Foreign Service Officer Class FS-1 will be based upon a memorandum from the technical office and approved by the assistant administrator or mission director having program responsibility for the project in support of which the contract is written. The technical office is responsible for evaluating the reasonableness of the proposed salary, taking into account such factors as the degree of technical competence required, the scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the contractor's customary salary level, and other pertinent information. Copies of all memoranda approved by the assistant administrator or mission director will be furnished to the Support Division, Office of Contract Management.

(3) For policies on compensation of third country national or cooperating country national contractor employees, see AIDPR 7-12.101-1.50(b).

(c)—(f) [Reserved]

(g) *Fringe benefits.* AID contracts spell out rules and principles governing reimbursement of specific fringe benefits related to overseas service, including leave, holidays, differential, allowances, travel, transportation, and similar costs. The contract provisions are set forth in Part 7-7.

[39 FR 33517, Sept. 18, 1974, as amended at 41 FR 1914, Jan. 13, 1976; 46 FR 51917, Oct. 23, 1981; 47 FR 13146, Mar. 29, 1982]

§ 7-15.205-46 Travel costs.

§ 7-15.205-46.50 Special restrictions.

[30 FR 12981, Oct. 12, 1965]

§§ 7-15.205-46.51—7-15.205-46.52 [Reserved]

§ 7-15.205-46.53 International travel.

International travel costs are allowable only when the travel has received the specific prior approval of the contracting officer. For purposes of this provision, international travel is defined as any travel outside of the United States, or its territories and possessions. (See AIDPR 7-7.5002-3.)

[39 FR 38646, Nov. 1, 1974]

Subpart 7-15.3—Contracts With Educational Institutions

§ 7-15.303-50 Predetermined fixed rates for indirect costs.

Section 635(k) of the Foreign Assistance Act of 1961, as amended, authorizes AID to use predetermined fixed rates in determining the indirect costs applicable under contracts with educational institutions.

[38 FR 28677, Oct. 16, 1973. Redesignated at 46 FR 31889, June 18, 1981]

§ 7-15.303-51 Compensation for personal services.

(a) Specific limitations on compensation for personal services are set forth in AIDPR 7-7.5501-5 and 7-7.5502-4. Contracting officer approval of salaries in excess of the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1, as set forth in the Uniform State/AID/USIA Regulations, as from time to time amended will be based upon a memorandum from the technical office and approved by the assistant administrator or mission director having program responsibility for the project in support of which the contract is written. The technical office is responsible for evaluating the reasonableness of the proposed salary, taking into account such factors as the degree of technical competence required, the scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the contractor's customary salary level, and other pertinent information. Copies of all memoranda approved by the assistant administrator or mission director will be furnished to the Support Division, Office of Contract Management.

(b) For policies on compensation of third country national or cooperating country national contractor employees, see AIDPR 7-12.101-1.50(b).

[39 FR 33518, Sept. 18, 1974. Redesignated at 46 FR 31889, June 18, 1981 and amended at 46 FR 51918, Oct. 23, 1981; 47 FR 13146, Mar. 29, 1982]

Subpart 7-15.6—Contracts with Nonprofit Organizations

§ 7-15.603-50 OMB Circular A-122; AID implementation.

(a) The transmittal letter for OMB Circular A-122 is set forth in FPR 1-15.603. Paragraph 6 of the transmittal letter specifies that "Agencies shall designate a liaison official to serve as the agency representative on matters relating to the implementation of this Circular." The Director, Office of Contract Management, Bureau for Program and Management Services, has been so designated. The Overhead and Special Cost Branch (SER/CM/SOD/OSC) in the Office of Contract Management provides staff assistance to the Director concerning OMB Circular A-122. SER/CM/SOD/OSC is also responsible for obtaining cognizance under the criteria in the transmittal letter for OMB Circular A-122; for liaison with other cognizant agencies; for authorizing exclusion of OMB Circular A-122 coverage for a particular nonprofit organization pursuant to paragraph 5 of the OMB Circular A-122 transmittal letter; and for advice and assistance in applying OMB Circular A-122 cost principles.

(b) Paragraph 4b of the OMB Circular A-122 transmittal letter contains a definition of "prior approval" as follows:

"Prior approval means securing the awarding agency's permission in advance to incur costs for those items that are designated as requiring prior approval by OMB Circular A-122. Generally, this permission will be in writing. Where an item of cost requiring prior approval is specified in the budget of an award, approval of the budget constitutes approval of that cost."

Consequently, an award containing a budget constitutes prior approval of the direct cost item in the budget, unless otherwise annotated. Accordingly, award budgets should be appropriately annotated substantially as follows:

"Inclusion of any cost in the line item budget of this award does not obviate the requirement for prior approval of cost items

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designated as requiring prior approval by OMB Circular A-122;"

or

"In accordance with the requirements of OMB Circular No. A-122, approval is granted to incur costs for (name specific item or items) which are included in the budget of this award."

[46 FR 31890, June 18, 1981]

§ 7-15.603-2.50 Compensation for personal services.

(a) AID is frequently required to report and justify reimbursement of salaries for contractor employees which exceed the maximum payable annual or daily rate for a Foreign Service Officer Class FS-1, as set forth in the Uniform State/AID/USIA Regulations, as from time to time amended. In order to be able to meet this requirement, it is AID policy to require prior approval by the contracting officer before reimbursing a contractor for employee conpensation which exceeds the FS-1 rate, as set forth in the payment schedule of the Uniform State/AID/USIA Regulations. The contracting officers approval will be obtained as specified in AIDPR 7-15.205-6(b)(2).

(b) For policies on compensation of third country national or cooperating country national contractor employees, see AIDPR 7-12.101-1.50(b).

[46 FR 31890, June 18, 1981, as amended at 46 FR 51918, Oct. 23, 1981; 47 FR 13146, Mar. 29, 1982]

PART 7-16—PROCUREMENT FORMS

Subpart 7-16.5—Forms for Advertised and Negotiated Nonpersonal Services Contracts (Other than Construction)

Sec.

7-16.500 Scope of subpart.
7-16.550 Cover Page for Agency for International Development Cost Reimbursement Type Contract.
7-16.551—7-16.553 [Reserved]
7-16.554 Cover Page for Contracts for Participant Training: Individual and Group.
7-16.555 Cover Page for Agency for International Development Fixed Price Technical Services Contract.
7-16.556 Cover Page for Agency for International Development Cost Reimbursement Contract with an Educational Institution.
7-16.557 Negotiated Indirect Cost Rate Agreement.

Subpart 7-16.8—Miscellaneous Forms

7-16.800 Scope of subpart.
7-16.806 Contract pricing proposals.
7-16.850 Small Business/Minority Business Enterprise Procurement Review Form.
7-16.851 Release and assignment forms.
7-16.851-1 Contractor's release and/or assignment of refunds, rebates, credits, and other amounts.
7-16.851-2 Assignee's release and/or assignment of refunds, rebates, credits, and other amounts.
7-16.852 Contract Negotiator's Checklist.
7-16.853 Contractor Employee Biographical Data Sheet.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; (22 U.S.C. 2381) E.O. 10973, Nov. 3, 1961, 26 FR 10469; 3 CFR 1959-63 Comp.

Subpart 7-16.5—Forms for Advertised and Negotiated Nonpersonal Services Contracts (Other Than Construction)

§ 7-16.500 Scope of subpart.

This subpart prescribes forms for use in advertised or negotiated nonpersonnel services contracts, other than construction contracts. Copies of all forms prescribed in this subpart are available from either SER/MP/PAV (Room B-926, New State), or SER/CM/SD/SUP (Room 709 PP), Department of State AID, Washington, D.C. 20523.

[43 FR 24840, June 8, 1978]

§ 7-16.550 Cover Page for Agency for International Development Cost Reimbursement Type Contract.

AID Form 1420-41A is for use with the General Provisions for Cost Reimbursement Type Contracts with a contractor other than an educational institution. Use of the Cover Page is mandatory as are the General Provisions prescribed in AIDPR 7-7.50.

[39 FR 21134, June 19, 1974, as amended at 43 FR 24840, June 8, 1978]

§§ 7-16.551—7-16.553 [Reserved]

§ 7-16.554 Cover Page for Contracts for Participant Training: Individual and Group.

(a) AID Form 1420-27F, "Cover Page for Contract for Participant Training (Individual)", is mandatory for use with contracts for the training of an individual, as are the General Provisions set forth in AIDPR 7-7.53.

(b) AID Form 1420-27G, "Cover Page for Contract for Participant Training (Group)", is mandatory for use with contracts for the training of a group, as are the General Provisions set forth in AIDPR 7-7.53.

[39 FR 21134, June 19, 1974, as amended at 43 FR 24840, June 8, 1978]

§ 7-16.555 Cover Page for Agency for International Development Fixed Price Technical Services Contract.

AID Form 1420-42A, "Cover Page for Agency for International Development Fixed Price Technical Services Contract", is for use with the General Provisions for a fixed price technical services type contract with a contractor other than an educational institution. Use of the Cover Page is mandatory as are the General Provisions prescribed in AIDPR 7-7.54.

[39 FR 21134, June 19, 1974, as amended at 43 FR 24840, June 8, 1978]

§ 7-16.556 Cover Page for Agency for International Development Cost Reimbursement Contract with an Educational Institution.

AID Form 1420-23A, "Cover Page for Agency for International Development Cost Reimbursement Contract with an Educational Institution", is for use with the General Provisions for cost reimbursement type contracts with educational institutions. Use of the Cover Page is mandatory as are the General Provisions prescribed in AIDPR 7-7.55.

§ 7-16.557 Negotiated Indirect Cost Rate Agreement.

AID Form 1420-47, "Negotiated Indirect Cost Rate Agreement" is for use in establishing indirect cost rates for Agency contracts.

[39 FR 21134, June 19, 1974, as amended at 43 FR 24840, June 8, 1978]

Subpart 7-16.8—Miscellaneous Forms

SOURCE: 38 FR 28677, Oct. 16, 1973, unless otherwise noted.

§ 7-16.800 Scope of subpart.

This subpart prescribes miscellaneous forms, other than procurement contract forms, for use in connection with AID Procurements. Copies of all forms prescribed in this subpart are available from either SER/MO/PAV (Room B-926, New State), or SER/CM/SD/SUP (Room 709 PP), Department of State, AID, Washington, D.C. 20523.

[43 FR 24840, June 8, 1978]

§ 7-16.806 Contract pricing proposals.

(a) The following forms are prescribed for use in meeting the requirements of § 1-3.807-3 of this title:

(1) *Hardware and Supplies.* Use Optional Form 59 as prescribed in § 1-3.807-3(a) and § 1-16.806 of this title when procuring hardware and supplies.

(2) *Research and Development.* Use Optional Form 60 as prescribed in § 1-3.807-3(a) and § 1-16.806 of this title when procuring research and development, except that AID Form 1420-18 may be used for research and development involving overseas performance.

(3) *Technical Services.* Use AID Form 1420-18 when procuring technical services.

(b) The offeror must also submit any supplementary information required by the "Instructions to the Offeror" or "Notes" sections of the forms set forth in paragraph (a) of this section.

(c) Contractors may, however, submit the necessary information in a format different from that required by paragraph (a) of this section where: (1) The contractor's accounting system makes the use of a particular form impracticable, or (2) when required for a more effective and efficient presentation of cost or pricing information. In either instance, the alternate format must be acceptable to the Contracting Officer and the information furnished should include pertinent details as to

the cost elements for the specific statements, authorizations, and authentications required by the form.

[38 FR 28677, Oct. 16, 1973, as amended at 43 FR 24840, June 8, 1978]

§ 7-16.850 Small Business/Minority Business Enterprise Procurement Review Form.

AID Form 1410-14 (Small Business/Minority Business Enterprise Procurement Review Form) is prescribed for use in accordance with § 7-2.704-6.

§ 7-16.851 Release and assignment forms.

(a) The forms set forth below are required for use in complying with the Contractor's release and assignment responsibilities under the final payment coverage in any of the clauses, entitled: (1) "Allowable Cost, Fixed Fee, and Payment", (2) "Method of Payment", and (3) "Allowable Cost and Payment", of AID's cost-reimbursement contracts and agreements.

(b) The forms shall be completed in accordance with the instructions contained thereon and submitted to the Contracting Officer administering the contract.

§ 7-16.851-1 Contractor's release and/or assignment of refunds, rebates, credits, and other amounts.

AID Form 1420-40 (Contractor's Release and/or Assignment of Refunds, Rebates, Credits, and Other Amounts) is the form for the Contractor's release and assignment required by the clauses cited in § 7-16.851(a) of this subpart.

§ 7-16.851-2 Assignee's release and/or assignment of refunds, rebates, credits, and other amounts.

AID Form 1420-44 (Assignee's Release and/or Assignment of Refunds, Rebates, Credits, and Other Amounts) is the form for the Assignee's release and assignment required by the clauses cited in § 7-16.851(a).

§ 7-16.852 Contract Negotiator's Checklist.

AID Form 1420-16, Contract Negotiator's Checklist is prescribed for use by AID negotiators to verify compliance with applicable regulations and policies in the preparation of all AID-direct contracts (including task orders or work assignments) or amendments thereto. The check-list shall be completed, signed and dated by the negotiator; reviewed by the contracting officer prior to execution of the document to which it applies; and filed in the official contract file.

[40 FR 16206, Apr. 10, 1975, as amended at 43 FR 24840, June 8, 1978]

§ 7-16.853 Contractor Employee Biographical Data Sheet.

(a) Form AID 1420-17, Contractor Employee Biographical Data Sheet is the prescribed form for use in submitting the data required by §§ 7-7.5001-3, 7-7.5401-2, and 7-7.5501-3 of this chapter.

(b) The form shall be included in each IFB, RFP, RFQ, or other form of solicitation when it is intended that the "Biographical Data" clause will be utilized. As required by the terms of either the solicitation or the contract clause entitled "Biographical Data," the offeror, bidder, or contractor shall, upon the contracting officer making such form available, submit the completed form AID 1420-17 for each employee, in triplicate, to the contracting officer or other AID office designated by the contracting officer.

(c) The contracting officer or other designated AID office evaluates the information submitted and utilizes it as the basis for determining the reasonableness of proposed salaries and/or country clearance. Any required notifications of approval or disapproval to the contractor shall be handled as expeditiously as possible by the cognizant AID office. One copy of each form AID 1420-17 submitted by the contractor shall be retained in the official contract file.

[40 FR 16206, Apr. 10, 1975, as amended at 43 FR 24840, June 8, 1978]

PART 7-17—EXTRAORDINARY CONTRACTUAL ACTIONS TO FACILITATE THE NATIONAL DEFENSE

Subpart 7-17.1—General

§ 7-17.101 Authority.

AID is not among the agencies named in the Act or authorized by the President to take actions under it; however, see Part 7-50—Extraordinary Contractual Action to Protect Foreign Policy Interests of the United States.

[41 FR 39320, Sept. 15, 1976]

PART 7-30—CONTRACT FINANCING

Subpart 7-30.4—Advance Payments

Sec.

7-30.400 Scope of subpart.
7-30.405 Statutory authorities.
7-30.406 Responsibility—delegation of authority.
7-30.407 The Act of August 28, 1968, Pub. L. 85-804—Formally advertised contracts.
7-30.410 Findings, determinations, and authorization.

Subpart 7-30.50—Federal Reserve Letter of Credit Method of Disbursing Advances To Non-profit Institutions

7-30.5000 Scope and applicability.
7-30.5001 Guidelines for use of the Federal Reserve Letter of Credit.
7-30.5001-7 Special provisions in a Federal Reserve Letter of Credit.
7-30.5001-2 Procedure to establish Federal Reserve Letter of Credit.
7-30.5001-3 Suspension or revocation of the Federal Reserve Letter of Credit.
7-30.5002 Contract clause—Federal Reserve Letter of Credit.

AUTHORITY: Sec. 621, 75 Stat. 445, as amended; 22 U.S.C. 2381.

Subpart 7-30.4—Advance Payments

SOURCE: 34 FR 18754, Nov. 22, 1969, unless otherwise noted.

§ 7-30.400 Scope of subpart.

References to non-profit contracts with non-profit educational or research institutions for experimental, research and development work include non-profit contracts with non-profit institutions for: (a) Technical assistance services provided to or for another country or countries, and (b) projects which concern studies, demonstrations and similar activities related to economic growth or the solution of social problems of developing countries.

[38 FR 28678, Oct. 16, 1973]

§ 7-30.405 Statutory authorities.

Sections 635 (b) of the Foreign Assistance Act and Executive Order 11223, May 12, 1955, 30 FR 6635, permit the making of advance payments with respect to functions authorized by the Foreign Assistance Act. Advance payments may also be made under section 305 of the Property Act, which provides authority, not otherwise available to AID, to take a paramount lien. (See § 7-30.410.)

§ 7-30.406 Responsibility—delegation of authority.

(a) The Agency head includes the officers who are included in the definition of "Head of the Agency" set forth in AIDPR 7-1.204. The authority of the Agency head may be delegated by him to the heads of procuring activities. The authority to make the required determination and findings may be delegated to the Chiefs of Contracting Offices with respect to nonprofit contracts with nonprofit educational or research institutions, including international organizations.

(b) Prior to committing the Government to making an advance payment, the Contracting Officer shall obtain the advice and concurrence of the Office of Financial Management, Programming Accounting Division (FM/PAD). For Mission executed advances, advice and concurrence of the Mission Controller should be obtained. If FM/PAD (or the Mission Controller) does not concur, the Contracting Officer shall refer the issue to the Head of the procuring activity for final decision.

[34 FR 18754, Nov. 22, 1969, as amended at 36 FR 23561, Dec. 10, 1971; 45 FR 44282, July 1, 1980]

§ 7-30.407 The Act of August 28, 1968, Pub. L. 85-804—Formally advertised contracts.

The Act referred to does not apply to AID.

§ 7-30.410 Findings, determinations, and authorization.

(a) Except as provided in paragraph (b) of this section, the authorities to be cited for advance payments under AID contracts are section 635(b) of the Foreign Assistance Act of 1961, as amended, and Executive Order 11223.

(b) Section 305 of the Federal Property and Administrative Services Act of 1949, as amended, should also be cited as authority in those cases in which the Contracting Officer determines that the security for advance payments should be in the form of liens in favor of the Government, paramount to all other liens, on: (1) The property contracted for, (2) the balance in the account in which such advance payments are deposited, or (3) property acquired for the performance of the contract.

Subpart 7-30.50—Federal Reserve Letter of Credit Method of Disbursing Advances to Non-profit Institutions

SOURCE: 40 FR 16206, Apr. 10, 1975, unless otherwise noted. Redesignated at 45 FR 44283, July 1, 1980.

§ 7-30.5000 Scope and applicability.

(a) The Federal Reserve Letter of Credit, Standard Form 1193, is used to provide advances of funds under AID direct contracts with state and local governments in the United States and with educational and other nonprofit institutions, including international organizations.

(b) The Federal Reserve Letter of Credit method shall not apply unless: (1) The Agency has, or expects to have, a continuing relationship of at least one year with a recipient organization; and (2) the annual amount required for advance financing will be at least $120,000.

(c) Documents drawing on Federal Reserve Letters of Credit, e.g., payment vouchers (Form TFS 5401), ordinarily will not be in amounts less than $5,000 or more than $5,000,000 but within the dollar ceiling on monthly or quarterly drawings specified in the contract. Cash drawdowns will be initiated only when cash is actually needed to make disbursements. Since the Federal Reserve Letter of Credit enables the recipient organization to withdraw cash from the Treasury concurrently with and as frequently as disbursements are made by the recipient, there need be no time lag between drawdowns from Treasury and disbursements by the recipient organization.

[40 FR 16206, Apr. 10, 1975, as amended at 43 FR 24840, June 8, 1978. Redesignated at 45 FR 44283, July 1, 1980, and amended at 46 FR 31890, June 18, 1981]

§ 7-30.5001 Guidelines for use of the Federal Reserve Letter of Credit.

In authorizing advance payments under the Federal Reserve Letter of Credit procedures, the contracting officer shall be guided by the following considerations:

(a) The cost principles contained in FPR 1-15 and AIDPR 7-15 should not be incorporated in the Federal Reserve Letter of Credit.

(b) The Federal Reserve Letter of Credit language given in § 7-30.5002 below should be modified to the extent necessary to adapt its payment provisions to those of the contract for which it provides advances.

(c) Federal Reserve Letter of Credit provisions incorporated into a contract shall not, in any way, alter or eliminate any fiscal reporting requirements contained in the contract.

(d) Contracts should require such security for funds advanced as may be considered appropriate for the protection of the Government under the circumstances of each case, as set forth in FPR 1-30.413 and AIDPR 7-30.413.

[40 FR 16205, Apr. 10, 1975. Redesignated and amended at 45 FR 44283, July 1, 1980]

§ 7-30.5001-1 Special provisions in a Federal Reserve Letter of Credit.

(a) Subadvances (i.e., advances by the contractor to subcontractors) may be authorized under prime contracts with universities or other nonprofit organizations subject to the requirements of FPR 1- 30.414-2(q). Such sub-

advances shall conform to the same standards as are applicable to those of the prime contractor for the timing of drawdowns and disbursements.

(b) The salary, commissions and bonus provision in FPR 1-30.414-2(r) may also be included in Federal Reserve Letter of Credit provisions, modified as appropriate. This provision will normally be used in contracts with nonprofit organizations which are not educational institutions.

(c) Provisions, such as a limitation on the amount which may be drawn during a specified period, a limitation on the forward period for which an advance may be requested (see Treasury Circular 1075), or a limitation in the rate of disbursements, may be incorporated in the Federal Reserve Letter of Credit.

§ 7-30.5001-2 Procedure to establish a Federal Reserve Letter of Credit.

When an advance of funds to finance a contract is required and the contracting officer decides that the Federal Reserve Letter of Credit is a suitable method, the following procedures shall be employed by the procuring activity prior to the execution of the contract:

(a) The contracting officer shall advise the Officer of the Controller in writing (pursuant to § 7-30.406(b)) as early as possible in the negotiation cycle, of the name and address of the proposed contractor, the type of contract and the estimated amount thereof, the total amount and the estimated dollar ceiling of withdrawals by month of the Federal Reserve Letter of Credit, the reasons the contracting officer deems an advance is required, and shall request his advice and concurrence. The following additional material shall be furnished along with the request:

(1) For nonprofit educational institutions and their related organizations:

(i) Copy of the contractor's proposal;

(ii) Copy of the PIO/T.

(2) For all other nonprofit institutions:

(i) The material required in paragraph (a)(1) of this section;

(ii) Such other data as may be required to conform to the Controller's current requirements: e.g., copy of the contractor's latest available balance sheet, and income and expense statement.

(b)(1) The Controller's concurrence in the amount requested or a different amount and/or rate of withdrawal, or his nonconcurrence, shall be supplied by memorandum to the contracting officer within five working days from receipt of this request.

(2) If the Controller does not concur, or recommends a different amount or rate of withdrawal, he shall set forth the reasons for such action. If the contracting officer does not agree, then the matter shall be referred to the head of the procuring activity or his delegate for final decision.

(3) In every instance, the contracting officer transmits for the signature of the head of the procuring activity (or his delegate pursuant to AIDPR 7-30.406 (a)) appropriate findings, determinations and authorization in support of an advance, including a copy of the written advice provided by the Controller. If the Controller did not concur in the requested advance, the approval of the head of the procuring activity shall be considered the decision referred to in paragraph (b)(2) of this section. A copy of each signed determination shall be furnished to the Office of the Controller.

(c) Before, or at the time of execution of the contract, the contract shall furnish the name of its commercial bank and the Federal Reserve Bank or branch serving the commercial bank to the contracting officer. The contractor shall also supply the specimen signature(s) of the official(s) authorized to sign payment vouchers against the Federal Reserve Letter of Credit and a specimen signature of the official of the institution who has authorized them to sign on three original Standard Forms 1194, "Authorized Signature Card for Payment Vouchers on Letters of Credit." The contracting officer shall then forward the following to the Controller for processing:

(1) The three signed signature cards (Standard Form 1194);

(2) A signed or conformed copy of the contract;

(3) The name and address of the contractor's commercial bank, and the Federal Reserve Bank or branch;

(4) A recommended dollar ceiling on monthly or quarterly drawings for inclusion on the Federal Reserve Letter of Credit when such limitation is considered desirable by the contracting officer; and

(5) A copy of the determination cited in paragraph (b)(3) of this section.

§ 7-30.5001-3 Suspension or revocation of the Federal Reserve Letter of Credit.

(a) The Office of the Controller notifies the contracting officer whenever it appears that the institution is drawing in excess of current needs or if it is delinquent more than 30 days in submitting required reports and documentation. The contracting officer may direct the institution to suspend issurance of payment vouchers until the credits are in line with anticipated needs or to submit the reports and documentation immediately and promptly notifies the Controller of any such action. The contracting officer may request the Controller to amend the Federal Reserve Letter of Credit to provide further appropriate limitation on the amount and frequency of submissions, and if the Controller concurs, the Federal Reserve Letter of Credit will be so amended.

(b) The contracting officer may, upon finding that the contractor has presented payment vouchers in excess of the amount allowable or otherwise has misused the Federal Reserve Letter of Credit, request the Controller to revoke the Federal Reserve Letter of Credit. Upon receipt of such request from the contracting officer the Controller, if concurring, issues a letter revoking the Federal Reserve Letter of Credit, giving it the same distribution as the original Federal Reserve Letter of Credit.

(c) If the Controller does not concur, he shall set forth the reasons for such action. If the contracting officer does not agree, then the matter shall be referred for a decision to the head of the procuring activity or his delegate for final decision.

§ 7-30.5002 Contract clause—Federal Reserve Letter of Credit.

The following language shall be incorporated in the schedule of all contracts in which a Federal Reserve Letter of Credit is to be used to provide advance payments. Any substantial modification to the clause shall be treated as a deviation and processed in accordance with AIDPR 7-1.107. However, special provisions may be added to the clause, as indicated in AIDPR 7-30.5001-1.

Federal Reserve Letter of Credit for Advance Payment (May 1982)

(a) AID shall open a Federal Reserve Letter of Credit in favor of the Contractor in the amount of $—— (for amending existing contracts, add the word "remaining" here) available for obligation under this contract against which the Contractor may present payment vouchers. The amount drawn by the Contractor during any calendar (month or quarter) of this contract shall not exceed $—— without the prior written authorization of the contracting officer. The amount of the payment voucher shall not be in an amount less than $5,000 nor more than $5,000,000 but within the specific dollar ceiling on (monthly or quarterly) withdrawals.

(b) In no event shall the accumulated total of all such payment vouchers exceed the amount of the Federal Reserve Letter of Credit.

(c) If at any time, the contracting officer determines the Contractor has presented payment vouchers in excess of the amount or amounts allowable in paragraphs (a) and (b) of this section, the contracting officer may: (1) Cause the Federal Reserve Letter of Credit to be suspended or revoked; or (2) direct the Contractor to withhold submission of payment vouchers until such time as, in the judgment of the contracting officer, an appropriate level of actual, necessary and allowable expenditures has occurred or will occur under this contract; and/or (3) request the Contractor to repay to AID the amount of such excess. Upon receipt of the contracting officer's request for repayment of excess advance

payments, the Contractor shall promptly comply with such request.

(d) *Procedure for contractor.* (1) After arranging with a commercial bank of its choice for operation under this arrangement and obtaining the name and address of the Federal Reserve Bank or branch serving the commercial bank, the Contractor shall deliver three originals of Standard Form 1194, "Authorized Signature Card for Payment Vouchers on Letters of Credit" signed by those official(s) authorized to sign payment vouchers against the Federal Reserve Letter of Credit and by an official of the institution who has authorized them to sign.

(2) Upon execution of the contract, the Contractor shall receive one certified copy of the Federal Reserve Letter of Credit.

(3) The Contractor shall confirm with his commercial bank that the Federal Reserve Letter of Credit has been opened and is available if funds are needed.

(4) To receive payment, the Contractor shall:

(i) Periodically prepare payment vouchers (Form TFS 5401) in an original and three copies.

(ii) Have the original and two copies of the voucher signed by the authorized official(s) whose signature(s) appear on the Standard Form 1194.

(iii) Present the original, duplicate, and triplicate copy of the Form TFS 5401 to his commercial bank.

(iv) Retain the quadruplicate copy of the voucher.

(5) Each drawdown should be initiated at approximately the same time that checks are issued by the organization in payment of program liabilities including those for allowable indirect costs, and in an amount approximately equal to the Federal share of such payments.

(6) A report of expenditures is prepared and submitted to the Office of Financial Management, within thirty days of disbursement. This report, submitted on Standard Form 1034, "Public Voucher for Purchases and Services Other Than Personal", and supported by certifications, listing of withdrawals, and documentation as required, itemizes expenditures made, identifying funds expended by line item of the approved budget and/or category supporting the agreement.

(7) The report of expenditures on Standard Form 1034 is reviewed against the contract provisions, and any disbursement improper under the contract is disallowed. The Contractor is notified of the reason for the disallowance and is directed to adjust the next periodic report of expenditures to reflect the disallowance and to reduce its next payment voucher against the Federal Reserve Letter of Credit by the amount of the disallowance.

(8) Simultaneously with the submission of the report of expenditures, the Contractor submits to the Controller a status report on the Federal Reserve Letter of Credit as of the close of the period covered by the report of expenditures. The report is prepared in the following format:

STATUS OF FUNDING REPORT

Federal Reserve Letter of Credit (FRLC) No.———

Period from——— through ———

A. Letter of Credit Position:
   1. Current amount of FRLC (including amendments) through reporting period.....
   2. Payment Vouchers on Letter of Credit presented (Form TFS-5401):
      a. Credited prior to reporting period.....
      b. Credited during reporting period via TFS-5401 Voucher Nos. —— through —— inclusive.....
      c. Presented but not credited during report via TFS-5401's numbered —— through —— inclusive.....
   3. Total of all Payment Vouchers against FRLC credited or presented.....
   4. Balance of FRLC not drawn or requested this reporting period.....

B. Cash Position:
   1. Cash on hand at beginning of period.....
   2. Plus: cash drawn during period.....
   3. Plus: refunds, rebates or other amounts received, to the extent allocable to disbursements charged against this FRLC.....
   4. Total cash available (sum of 1, 2, and 3).....
   5. Less: disbursements during period.....
   6. Balance of cash on hand at close of reporting period.....
   7. Estimated number of days requirements covered by balance on hand (item 6 above) Days: ——.....
   8. Advances to subcontractors $—— (included in B. 6 above).....

(e) [Reserved]

(f) *Refund of excess funds.* (1) If all costs have been settled under the contract and the Contractor fails to comply with the contracting officer's request for repayment of excess Feder-

BEST DOCUMENT AVAILABLE

al Reserve Letter of Credit funds, the Government shall have the right, on other contracts held with the Contractor, to withhold payment of Federal Reserve Letter of Credit or other advances and/or withhold reimbursements due the Contractor in the amount of the excess being held by the Contractor.

(2) If the Contractor is still holding excess Federal Reserve Letter of Credit funds on a contract under which the work has been completed or terminated but all costs have not been settled, the Contractor agrees to:

(i) Provided within 30 days after requested to do so by the contracting officer, a breakdown of the dollar amounts which have not been settled between the Government and the Contractor. (The contracting officer will assume no costs are in dispute if the Contractor fails to reply within 30 days.);

(ii) Upon written request of the contracting officer, return to the Government the sum of dollars, if any, which represents the difference between: (A) The Contractor's maximum position on claimed costs which have not been reimbursed and (B) the total amount of unexpended funds which have been advanced under the contract; and

(iii) If the Contractor fails to comply with the contracting officer's request for repayment of excess Federal Reserve Letter of Credit funds, the Government shall have the right, on other contracts held with the Contractor, to withhold payment of Federal Reserve Letter of Credit or other advances and/or withhold reimbursements due the Contractor in the amount of the excess being held by the Contractor.

[41 FR 39320, Sept. 15, 1976, as amended at 43 FR 24840, June 8, 1978. Redesignated and amended at 45 FR 44283, July 1, 1980; 46 FR 31890, June 18, 1981; 47 FR 25966, June 16, 1982]

PART 7-50—EXTRAORDINARY CONTRACTUAL ACTIONS TO PROTECT FOREIGN POLICY INTERESTS OF THE UNITED STATES

Subpart 7-50.1—General

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7-50.208-4 Processing by approving authority.
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7-50.208-6 Inter-agency coordination.

AUTHORITY: Sec. 633, 75 Stat. 454 (22 U.S.C. 2393) as amended; E.O. 11223, May 12, 1965 (30 FR 6635) as amended; sec. 621, 72 Stat. 445 (22 U.S.C. 2381) as amended; E.O. 10973, Nov. 3, 1961 (26 FR 10469); 3 CFR 1959-63 Comp.

SOURCE: 41 FR 39320, Sept. 15, 1976, unless otherwise noted.

Subpart 7-50.1—General

§ 7-50.101 Authority.

Pursuant to section 633 of the Foreign Assistance Act of 1961, 75 Stat. 454 (22 U.S.C. 2393) as amended. Executive Order 11223, dated May 12, 1965 (30 FR 6635) as amended, and

State Department Delegation of Authority No. 104, dated November 3, 1961 (26 FR 10608) as amended, the Administrator of the Agency for International Development has been granted authority to provide extraordinary contractual relief. The authority is set forth in sections 3 and 4 of the Executive Order as follows:

SEC. 3. With respect to cost-type contracts heretofore or hereafter made with nonprofit institutions under which no fee is charged or paid, amendments or modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or of the form of the contract amended or modified, or the amending or modifying contract and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

SEC. 4. With respect to contracts heretofore or hereafter made, other than those described in Section 3 of this Order, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof, if the Secretary of State determines in each case that such action is necessary to protect the foreign policy interests of the United States.

§ 7-50.102 General policy.

Extra-contractual claims arising from Foreign Assistance contracts will be processed in accordance with this part, which is similar to that utilized to process claims for extraordinary relief under the FPR Part 1-17, as modified to meet the circumstances involved under the Foreign Assistance Act and the different authority involved. See Subpart 7-50.2.

§ 7-50.103 Definitions.

(a) The term "approving authority" as used in this part means an officer or official having been delegated authority to approve actions under the Executive Order. This authority is distinguished from authority to take appropriate contractual action pursuant to such approval.

(b) The term "the Executive Order" shall mean Executive Order 11223 (30 FR 6635) as amended.

(c) The term "the Delegation of Authority" shall mean State Department Delegation of Authority No. 104 (26 FR 10608).

(d) The term "Administrator" means the Administrator or Deputy Administrator of the Agency for International Development.

(e) The term "the Act" shall mean the Foreign Assistance Act of 1961, as amended.

§ 7-50.104 Types of actions.

Three types of actions may be taken by or pursuant to the direction of an approving authority under the Executive Order. These are contractual adjustments such as amendments without consideration, correction of mistakes and formalization of informal commitments (see Subpart 7-50.2).

Subpart 7-50.2—Requests for Contractual Adjustment

§ 7-50.200 Scope of subpart.

This subpart sets forth the standards and the procedures for disposition of requests for extraordinary contractual actions under the Executive Order.

§ 7-50.201 Authority.

The authority delegated to the Secretary of State under the Executive Order has been redelegated by him to the Administrator, Agency for International Development, under State Department Delegation 104, with power to redelegate.

§ 7-50.202 Approving authorities.

Authority to approve actions processed under this Part 7-50 has been delegated as follows:

(a) The Director, Office of Contract Management, may approve actions up to $50,000 per contract under section 3 of the Executive Order. The Deputy Assistant Administrator, Bureau for Program and Management Services, may approve actions up to $250,000

per contract under section 3 of the Executive Order.

(b) The Assistant Administrator, Bureau for Program and Management Service, may approve actions up to $250,000 per contract under both section 3 and section 4 of the Executive Order.

(c) The Administrator and Deputy Administrator must approve any action over $250,000.

[45 FR 44283, July 1, 1980; 45 FR 48888, July 22, 1980]

§ 7-50.203 [Reserved]

§ 7-50.204 Standards for deciding cases.

§ 7-50.204-1 General.

The mere fact that losses occur under a Government contract is not, by itself, a sufficient basis for the exercise of the authority conferred by the Executive Order. Whether, in a particular case, appropriate action such as amendment without consideration, correction of a mistake or ambiguity in a contract, or formalization of an informal commitment, will protect the foreign policy interests of the United States is a matter of sound judgment to be made on the basis of all of the facts of such case. Although it is obviously impossible to predict or enumerate all the types of cases with respect to which action may be appropriate, examples of certain cases or types of cases where action may be proper are set forth in §§ 7-50.204-2 through 7-50.204-4. Even if all of the factors contained in any of the examples are present, other factors or considerations in a particular case may warrant denial of the request. These examples are not intended to exclude other cases where the approving authority determines that the circumstances warrant action.

§ 7-50.204-2 Amendments without consideration.

(a) Where an actual or threatened loss under a Foreign Assistance contract, however caused, will impair the productive ability of a contractor whose continued performance on any Foreign Assistance contract or whose continued operation as a source of supply is found to be essential to protect the foreign policy interests of the United States, the contract may be adjusted but only to the extent necessary to avoid such impairment to the contractor's productive ability.

(b) Where a contractor suffers a loss (not merely a diminution of anticipated profits) on a Foreign Assistance contract as a result of Government action, the character of the Government action will generally determine whether any adjustment in the contract will be made and its extent. Where the Government action is directed primarily at the contractor and is taken by the Government in its capacity as the other contracting party, the contract may be adjusted if fairness so requires; thus where such Government action, although not creating any liability on its part, increases the cost of performance, considerations of fairness may make appropriate some adjustment in the contract.

§ 7-50.204-3 Mistakes.

A contract may be amended or modified to correct or mitigate the effect of a mistake, including the following examples:

(a) A mistake or ambiguity which consists of the failure to express or to express clearly in the written contract the agreements as both parties understood them;

(b) A mistake on the part of the contractor which is so obvious that it was or should have been apparent to the contracting officer; and

(c) A mutual mistake as to a material fact.

Amending contracts to correct mistakes with the least possible delay normally will protect the foreign policy interests of the United States by expediting the procurement program and by giving contractors proper assurance that such mistakes will be corrected expeditiously and fairly.

§ 7-50.204-4 Informal commitments.

Informal commitments may be formalized under certain circumstances to permit payment to persons who have taken action without a formal contract; for example, where any person, pursuant to written or oral instructions from an officer or official

of the Agency and relying in good faith upon the apparent authority of the officer or official to issue such instructions, has arranged to furnish or has furnished property or services to the Agency and/or to a Foreign Assistance contractor or subcontractor without formal contractual coverage for such property or services. Formalization of commitments under such circumstances normally will protect the foreign policy interests of the United States by assuring persons that they will be treated fairly and paid expeditiously.

§ 7-50.205 Limitations upon exercise of authority.

(a) The Executive Order is not authority for:

(1) The use of the cost-plus-a-percentage-of-cost system of contracting;

(2) The making of any contract in violation of existing law relating to limitation on profit or fees;

(3) The negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding; or

(4) The waiver of any bid, payment, performance or other bond required by law.

(b) No amendments, or modifications shall be entered into under the authority of the Executive Order:

(1) Unless, with respect to cases falling within section 4 of the Executive Order, a finding is made that the action is necessary to protect the foreign policy interests of the United States;

(2) Unless other legal authority in the Agency is deemed to be lacking or inadequate;

(3) Except within the limits of the amounts appropriated and the statutory contract authorization.

(c) No contract shall be amended or modified unless the request therefor has been filed before all obligations (including final payment) under the contract have been discharged.

(d) No informal commitment shall be formalized unless:

(1) A request for payment has been filed within six months after arranging to furnish or furnishing property or services in reliance upon the commitment; and

(2) It is found that at the time the commitment was made it was impracticable to use normal procurement procedures.

§ 7-50.206 Contractual requirements.

Every contract amended or modified pursuant to this Part shall contain:

(a) A citation of the Act and Executive Order.

(b) A brief statement of the circumstances justifying the action;

(c) A recital of the finding, with respect to cases falling within section 4 of the Executive Order, that the action is necessary to protect the foreign policy interests of the United States.

§ 7-50.207 Submission of requests by contractors.

§ 7-50.207-1 Filing requests.

Any person (hereinafter called the "contractor") seeking an adjustment under standards set forth in § 7-50.204 may file a request in duplicate with the cognizant contracting officer or his duly authorized representative. If such filing is impracticable, requests will be deemed to be properly filed if filed with the Director, Office of Contract Management of the Agency for forwarding to the cognizant contracting officer.

§ 7-50.207-2 Form of requests by contractors.

The contractor's request shall normally consist of a letter to the contracting officer stating:

(a) The precise adjustment requested;

(b) The essential facts summarized in chronological narrative form;

(c) The contractor's conclusions based on such facts and showing, in terms of the standards set forth in § 7-50.204, why the contractor considers himself entitled to the adjustment requested.

(d) Whether all obligations have been discharged under the contracts involved;

(e) Whether final payment has been made under the contracts involved;

(f) Whether any proceeds from the request will be subject to any assignment or other transfer, and to whom; and

(g) Whether the contractor has sought the same, or a similar or related, adjustment from the General Accounting Office or any part of the Government, or anticipates doing so.

§ 7–50.207–3 [Reserved]

§ 7–50.207–4 Facts and evidence.

(a) *General.* The contracting officer or the approving authority may, where considered appropriate, request the contractor to furnish the facts and evidence as described in this paragraph (a), and in addition, where applicable, as described in paragraphs (b), (c), (d), or (e) of this section. In complying with such requests, the contractor may also submit other statements and evidence which he may consider helpful to the case.

(1) If written contracts are involved, a brief description of the contracts, indicating the dates of execution and amendments thereto, the items being procured, the price or prices and delivery schedule and revisions thereof, and such other special contractual provisions as may be relevant to the request.

(2) A history of performance indicating when work under the contracts or commitments was begun, the progress made to the present, an exact statement of the contractor's remaining obligations, and the contractor's expectations regarding completion thereof.

(3) A statement of payments received, payments due, and payments yet to be received or to become due, including advance and progress payments, and amounts withheld by the Government, and information as to other obligations of the Government, if any, which are yet to be performed under the contract.

(4) A statement giving a detailed analysis of the monetary elements of the request including precisely how the actual or estimated dollar amount of the request was arrived at, the effect of approval or denial on the contractor's profits before Federal income taxes, and whether the costs for which reimbursement is requested have been included as a part of his gross costs in the statutory renegotiation proceedings, together with the contractor's renegotiation status for the relevant years.

(5) If a written contract is involved, a statement of the contractor's understanding of why the subject matter of the request cannot now, and could not at the time it arose, be disposed of under the terms of the contract itself.

(6) The best evidence available to the contractor in support of any facts alleged by the contractor, including contemporaneous memoranda, correspondence, affidavits, and any other material tending to establish matters of fact.

(7) Relevant financial statements, cost analyses, or other such data, preferably certified by a certified public accountant, including such additional financial data as is necessary to explain fully and to support the monetary elements of the request for adjustment.

(8) A list of persons (either within the Agency, in the employ of the contractor, or otherwise connected with the contract) who have some factual knowledge of the subject matter, including where possible the name, office or title, address and telephone number of each such person.

(9) A statement and evidence of steps to mitigate loss and reduce claims to a minimum.

(10) Such other statements or evidence as may be requested by the contracting officer.

(b) *Amendments without consideration under § 7–50.204–2(a).* In addition to the facts and evidence listed in paragraph (a) of this section, where a request involves possible amendment without consideration, the contractor may be asked to furnish such of the following as is deemed appropriate to the request:

(1) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances and profit;

(2) A statement and evidence of the contractor's present estimate of total costs under the contracts involved if enabled to complete, broken down between costs accrued to date of request, and runout costs, and as between costs

for which the contractor has made payment and those for which he is indebted at the time of the request;

(3) A statement and evidence of the contractor's estimate of the final price of the contracts involved giving effect to all escalation, changes, extras and the like, known or contemplated by the contractor;

(4) A statement of any claims known or contemplated by the contractor against the Government involving the contracts in question, other than those stated in response to paragraph (b)(3) of this section.

(5) An estimate of the contractor's total profit or loss under contracts involved if enabled to complete at the estimated final contract price (see paragraph (b)(3) of this section) broken down between profit or loss to date, and runout profit or loss;

(6) An estimate of the total profits from other Government business, and all other sources, during the period from the date of the first contract involved to the estimated date of completion of all the contracts involved;

(7) A statement of the amount of any tax refunds and an estimate of those anticipated during or for the period from the date of the first contract involved through the estimated completion date of all the contracts involved;

(8) A statement in detail as to efforts the contractor has made to obtain funds from commercial sources to enable him to complete performance of the contracts involved;

(9) A statement of the minimum amount necessary as an amendment without consideration to enable the contractor to complete performance of the contracts involved, and the detailed basis for that amount;

(10) An estimate of the time required to complete each contract, if the request is granted;

(11) A statement of the factors which have caused the loss under the contracts involved;

(12) A statement as to the course of events anticipated if the request is denied;

(13) Balance sheets, preferably certified by a certified public accountant, as of the end of the contractor's fiscal year preceding the date of the first contract, as of the end of each subsequent fiscal year, as of the date of the request, and projected as of the date of completion of all the contracts involved assuming the contractor is enabled to complete the contracts at the final prices estimated pursuant to paragraph (b)(3) of this section, together with income statements for annual periods subsequent to the date of the first balance sheet (balance sheets and income statements should be both consolidated, and by affiliates, and should show all transactions between the contractor and his affiliates, stockholders, and partners, including loans to the contractor guaranteed by any stockholder or partner); and

(14) A list of all salaries, bonuses and all other forms of compensation of the principal officers or partners and of all dividends and other withdrawals, and all payments to stockholders in any form since the date of the first contract involved.

(c) *Amendments without consideration under § 7-50.204-2(b).* In addition to the facts and evidence listed in paragraph (a) of this section, where a request involves possible amendment without consideration because of Government action, the contractor may be asked to furnish such of the following as is deemed appropriate to the request:

(1) A clear statement of the precise Government action which the contractor considers caused a loss under the contract with evidence to support each essential fact;

(2) A statement and evidence of the contractor's original breakdown of estimated costs, including contingency allowances and profit;

(3) The estimated total loss suffered under the contract, with detailed supporting analysis; and

(4) The estimated loss resulting from the Government action, with detailed supporting analysis.

(d) *Correction of mistakes.* In addition to the facts and evidence listed in paragraph (a) of this section, where a request involves possible correction of a mistake, the contractor may be asked to furnish such of the following as is deemed appropriate to the request:

(1) A statement and evidence of the precise mistake or error that was made, the ambiguity that exists, or the misunderstanding that arose, showing of what it consisted and how it occurred, and the intention of the parties;

(2) A statement explaining when the mistake was discovered, when notice of mistake was given to the contracting officer, and whether given before completion of work under, or the effective date of termination of the contract;

(3) An estimate of loss of profit under the contract with detailed supporting analysis; and

(4) An estimate of the increase in cost to the Government resulting from the adjustment requested with detailed supporting analysis.

(e) *Formalization of informal commitments.* In addition to the facts and evidence listed in paragraph (a) of this section, where a request involves possible formalization of an informal commitment, the contractor may be asked to furnish such of the following as is deemed appropriate to the request:

(1) Copies or any written instructions or assurances, or a statement under oath as to any oral instructions or assurances made to the contractor, with identification of the Government officer or official making such statement;

(2) A statement as to when the property or services were furnished or arranged to be furnished, and to whom;

(3) Evidence that the contractor relied upon the instructions or assurances, with a full description of the circumstances which led him so to rely, and that the contractor intended, at the time of performing the work, to be compensated directly for it by the Government and did not anticipate recovery of the costs in some other way;

(4) A cost breakdown supporting the amount claimed as a fair compensation for the work performed; and

(5) A statement and evidence of why it was impracticable to provide for the work performed in an appropriate contractual instrument.

§ 7-50.208 Processing cases.

§ 7-50.208-1 Investigation.

The Director, Office of Contract Management, shall be responsible for assuring that the cognizant contracting officer in all cases shall make a thorough investigation of all facts and issues relevant to each case. Facts and evidence shall be obtained from contractor and Government personnel, and shall include signed statements of material facts within the knowledge of the individuals where documentary evidence is lacking, and audits where considered necessary to establish financial or cost facts. The investigation shall establish both the facts essential to meeting the standards for deciding the particular case and the essential facts as to who has authority to approve the request.

§ 7-50.208-2 Intra-agency coordination.

Prior to the submission of a case to the approving authority recommending extraordinary contractual relief, the claim will be fully developed by the Office of Contract Management and concurrences or comments obtained from the Office of General Counsel and the Auditor General for the proposed relief to be granted. Such concurrences or comments shall be incorporated in or accompany the action memorandum submitted for consideration to the approving authority in accordance with § 7-50.208-3.

§ 7-50.208-3 Submission of cases to the approving authority.

Cases to be submitted for consideration shall be forwarded by means of an action memorandum signed by the Director, Office of Contract Management. The action memorandum shall state:

(a) The nature of the case;

(b) The basis for authority to act under § 7-50.201;

(c) The findings of fact essential to the case (see § 7-50.207-4) arranged chronologically with cross references to supporting enclosures;

(d) The conclusions drawn from applying the standards for deciding cases, as set forth in § 7-50.204, to the findings of fact;

(e) The disposition recommended, and, if contractual action is recommended with respect to cases falling within section 4 of the Executive Order, the opinion of the signer that such action is necessary to protect the foreign policy interest of the United States; and

(f) The action memorandum shall enclose copies of the contracting officer's findings and recommendations, the evidentiary materials, all other reports and comments of cognizant Government or other officials, and a copy of the contractor's request with a cover sheet providing the following summary information related to the request:

(1) Date of request;

(2) Date request received by AID;

(3) Contract number;

(4) Contractor's name and address;

(5) Name, address, and phone number of contractor's representative;

(6) Name, office symbol, and phone of cognizant contracting officer;

(7) Amount of request.

§ 7-50.208-4 Processing by approving authority.

In each case, the approving authority whether approving or denying the request, shall sign a decision which shall be dated and shall contain the following:

(a) The name and address of the contractor, the contract identification, and the nature of the request;

(b) The decision reached and the actual cost or estimated potential cost, if any, of the settlement;

(c) A concise description of the property or services involved;

(d) A statement of the circumstances justifying the decision; and

(e) If some adjustment action is approved with respect to cases falling within section 4 of the Executive Order, a statement in substantially the following form:

I find that the action authorized herein is necessary to protect the foreign policy interests of the United States.

§ 7-50.208-5 Records.

The following shall be retained in Agency files as a record of each action processed in accordance with this part:

(a) The decision required in § 7-50.208-4;

(b) The action memorandum and all enclosures as required in § 7-50.208-3; and

(c) A copy of the contractual document implementing any approved contractual action.

§ 7-50.208-6 Inter-agency coordination.

(a) *General.* Where a case involves matters of interest to more than one department or agency, the Agency should maintain liaison with other departments and agencies of the Government and take such joint action as may be proper under the circumstances, including holding joint meetings.

(b) *Cases involving funds of other departments or agencies.* Requests for adjustment within any category, involving the funds of another department or agency, shall not be approved by AID until advice is requested and received from the department or agency whose funds are involved.

PART 7-60—CONTRACT APPEAL PROCEDURE

Subpart 7-60.1—Appeals Procedure

Sec.

7-60.101 Designation of Armed Services Board of Contracts Appeals (ASBCA) to hear and determine appeals under AID contracts.

7-60.102 Special procedures regarding contract disputes appeals promulgated pursuant to Paragraph 2 of the Administrator's Designation.

AUTHORITY: Sec. 621, 72 Stat. 445, as amended; 22 U.S.C. 2381, E.O. 10973, Nov. 3, 1961, 26 FR 10469; 3 CFR 1959-63 Comp.

Subpart 7-60.1—Appeals Procedure

§ 7-60.101 Designation of Armed Services Board of Contract Appeals (ASBCA) to hear and determine appeals under AID contracts.

(a) The Armed Services Board of Contract Appeals is hereby designated the authorized representative of the Administrator of the Agency for International Development (AID) in hearing, considering, and determining as fully and finally as might the Administrator, appeals by contractors from decisions on disputed questions taken pursuant

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to the provisions of contracts requiring the determination of such appeals by the Administrator or his duly authorized representative or Board.

(b) In acting under this designation, the Armed Services Board of Contract Appeals will follow such rules and procedures as are or may be prescribed for the conduct of Defense Department contract appeal cases, except for the rules entitled "Forwarding of Appeals" (Rule 3) and "Duties of the Contracting Officer" (Rule 4), which subjects will be governed by procedures to be promulgated by the General Counsel of AID with approval of the Chairman of the Armed Services Board of Contract Appeals.

(c) The General Counsel of AID will assure representation of the interests of the Government in proceedings before the Armed Services Board of Contract Appeals.

(d) All officers and employees of AID will cooperate with the Armed Services Board of Contract Appeals and Government counsel in the processing of appeals so as to assure their speedy and just determination.

(e) This designation will apply to appeals which have not been docketed by the Agency for International Development Board of Contract Appeals before November 1, 1965, and, to such extent and in such manner as may be agreed upon by the General Counsel of AID and the Chairman of the Armed Services Board of Contract Appeals to appeals docketed before that date.

(f) The General Counsel of AID will assure that all matters docketed by the Agency for International Development Board of Contract Appeals before November 1, 1965, are transferred or brought to completion, that no appeals will subsequently be docketed by that Board, that upon completion of its business the records and files of the Board will be transferred to the Executive Secretary of AID. The General Counsel will thereupon dissolve the Board.

[39 FR 21134, June 19, 1974]

§ 7-60.102 Special procedures regarding contract disputes appeals promulgated pursuant to Paragraph 2 of the Administrator's Designation.

The following rules will apply, in lieu of Rules 3 and 4(a) of the Armed Services Board of Contract Appeals, to contract dispute appeals to the Administrator of the Agency for International Development or his authorized representative which are docketed with that Board.

Rule 3 (AID). *Forwarding of Appeals.* When a notice of appeal in any form has been received by the contracting officer, he shall endorse thereon the date of mailing (or date or receipt, if otherwise conveyed) and within 10 days shall forward said notice of appeal to the Board with a copy of the AID General Counsel in Washington, D.C. Following receipt by the Board of the original notice of an appeal (whether through the contracting officer or otherwise), the contractor, the contracting officer, and the AID General Counsel will be promptly advised of its receipt, and the contractor will be furnished a copy of these rules.

Rule 4 (AID). *Preparation, Contents, Organization, Forwarding, and Status of Appeal File* (Supersedes Rule 4, "Duties of Contracting Officer" of the ASBCA rules in effect on September 30, 1965).

(a) *Duties of Contracting Officer.* Within 30 days of receipt of an appeal, or advice that an appeal has been filed, the contracting officer shall assemble and transmit to the AID General Counsel in Washington, D.C., two copies of all documents pertinent to the appeal, including:

(1) The decision and findings of fact from which appeal is taken;

(2) The contract, including specifications and pertinent amendments, plans and drawings;

(3) All correspondence between the parties pertinent to the appeal, including the letter or letters of claim in response to which the decision was issued;

(4) All transcripts of any testimony taken during the course of proceedings, and affidavits or statements of any witnesses on the matter in dispute made prior to the filing of the notice of appeal with the Board; and

(5) Any additional information considered pertinent.

The General Counsel will compile the appeal file from such documents, which file must contain the items enumerated in (1) through (5) above and will promptly, and in any event within 65 days after the appeal is docketed by the Board, transmit the appeal file to the Board. The General Counsel will notify the appellant when he has compiled the appeal file, will provide him with a list of its contents, and will afford him an opportunity to examine the complete file at the office of the Board and, if the General Counsel deems it appropriate, at any overseas location, for the purpose of satisfying himself as to the contents, and furnishings or suggesting any additional documentation deemed pertinent to the appeal. After receipt of the foregoing file, as it may be augmented at the time of receipt, the Board will promptly advise the parties.

[39 FR 21134, June 19, 1974]

Appendices to Chapter 7

APPENDICES

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APPENDIX A—RESPECTIVE ROLES OF CONTRACTING AND OTHER PERSONNEL IN THE AID PROCUREMENT PROCESS

1. Basic Policy

Only a contracting officer, designated to enter into contracts and make the determinations and findings related thereto (or an authorized representative of the contracting officer acting within the limits of his authority), may bind the United States Government to a contract, or direct or authorize a contractor to proceed with work (see FPR § 1-1.207, § 1-3.801).

2. Planning, Competition, Negotiation, and Award

(a) Preaward technical discussions with potential contractors should be conducted in such a manner as to preclude the assumption by any potential contractor that a commitment has been made to him. AID employees are responsible for insuring that no unfair competitive advantage is afforded one contractor over any other contractor in competing for Agency contracts. In this connection, discussions with prospective contractors prior to the final selection of the contractor and commencement of negotiations by the contracting officer must be conducted with the greatest discretion. Under no circumstances should the specific amount of funds which the Agency has available to support a contract be made known to a prospective contractor. No AID employee is authorized to dilute the Agency's negotiation position prior to or during an "arm's length" negotiation conducted between AID and the contractors with whom it does business. The requirement for preservation of the Agency's negotiation position must be scrupulously observed whether the procurement is to be negotiated with a single, non-competitive source or whether it is to be negotiated on the basis of multiple competitive proposals. It is advisable to involve the contracting officer in the project planning cycle as early as possible, and to insure that he or his representative is either present at any meeting with prospective contractors, or is consulted prior to such a meeting.

(b) Contracting personnel act upon requirements which are formulated by the planning, technical, and research offices of the Agency. Contracting officers obtain the information they need on technical requirements by questions and discussions with the planning, technical, and research offices of the Agency. If a contract is to be tenable, the end result which is desired must be described with completeness and exactitude. The scope of the work must be explicitly stated; otherwise the contracting officer cannot assure terms in a contract by which the desired action can be enforced. If the requiring office cannot provide a point of departure in these terms and deliver to the contracting officer a clear-cut description of the purpose and outline the limits of the scope, re-

sults may be disappointing and the possibility of deferring the project until these elements can be given more concrete dimensions should be considered. Finally, the requiring office should insure that the scope of work and funding information are delivered to the contracting officer with sufficient lead time to allow for proper preparation and planning of the procurement.

(c) One of the paramount duties of the contracting officer is to secure competition to the maximum practical extent for any planned procurement. The procedures for formally advertised, or for publicized negotiated, or for limited source procurements differ; the contracting officer must determine the proper method of procurement and contract type, and must determine the extent of competition required. The technical office has a continuing responsibility to assist the contracting officer in this effort to obtain competition and negotiate a contract. Basically, this commences with adequate drafting of the statements of work and specifications. The technical office can frequently assist by identifying additional technically competent sources for the solicitation of proposals.

3. Contract Administration

Meetings to discuss contract matters with contractors should be preceded by sufficient advance notification to all parties, including the contracting officer, to permit advance arrangements for the attendance at such meetings. Technical personnel shall not hold discussions of contract problems with contractors or technical problems with contractual implications without arranging for attendance by contracting personnel. Once a meeting with a contractor has been agreed upon and the issues have been made known to all involved parties, an internal AID meeting should take place between technical and contracting personnel, with the Country Desk representative and such other personnel in attendance as may be necessary, to establish an AID position or line of inquiry to be followed in the meeting with the contractor. If differences of opinion arise among AID personnel in the meeting with the contractor, such differences should never be discussed in the meeting with the contractor. AID personnel shall adjourn to resolve privately any such differences of opinion, and resume discussions with the contractor only when the AID position is consolidated. The AID individual designated to chair meetings with a contractor should be selected prior to the meeting with the contractor. Depending upon the issues to be discussed, whether primarily technical or primarily contractual, the chairman should be designated from either the technical office or the contracting office.

[46 FR 31566, June 16, 1981]

Appendix B—AID Contract Formats

1. FPR and AIDPR Required Contract Clauses

FPR 1-7 and 1-16, and AIDPR 7-7 and 7-16 establish prescribed general provision clauses and contract cover pages for AID contracts.

2. General Provisions

(a) For administrative convenience, AID issues preprinted general provisions and additional general provisions, as shown in the list below:

AID Form No. and Title

1420-27H General Provisions—Contract for Participant Training
1420-41C General Provisions—Cost Reimbursement Type Contract
1420-41D Additional General Provisions—Cost Reimbursement Type Contract
1420-42C General Provisions—Fixed Price Technical Services Contract
1420-42D Additional General Provisions—Fixed Price Technical Services Contract
1420-23C General Provisions—Cost Reimbursement Contract with an Educational Institution
1420-23D Additional General Provisions—Cost Reimbursement Contract with an Educational Institution

(b) The preprinted general provisions and additional general provisions listed in paragraph 2(a), of this section

are preprinted as a convenience, to save typing and assembly time. Each AID contract negotiator and contracting officer is responsible for insuring that the contract contains the clauses required by the relevant sections of AIDPR 7-7 and FPR 1-7; the clauses set forth in AIDPR 7-7 and FPR 1-7 take precedence over equivalent clauses in the preprinted formats.

(c) The preprinted formats are updated as of October 1 of each year to bring them into conformance with the required clauses established in AIDPR Part 7-7 and FPR 1-7. Between such revisions, AID contract specialists are responsible for ensuring that the required clauses established in FPR 1-7 and AIDPR Part 7-7 are utilized.

3. Contract Schedules

Contract Schedule outlines have been prepared for optional use in developing the final contract schedule. The following outlines are available:

AID Form No. and Title	
1420-41B	Schedule—Cost Reimbursement Type Contract
1420-42B	Schedule—Fixed Price Technical Services Contract
1420-23B	Schedule—Cost Reimbursement Contract with an Educational Institution

4. Contract Cover Pages

Required cover pages are prescribed in FPR 1-16 and AIDPR 7-16.

5. Availability of Formats

The contract formats referenced herein are stocked by the AID Distribution Branch and by the Support Division, Office of Contract Management. Mission contracting offices should order their supply through AID Distribution; AID/W contracting offices, through the Support Division, Office of Contract Management.

[46 FR 31567, June 16, 1981]

Appendix C—Contractor Performance Evaluation Report

1. Purpose

(a) The Contractor Performance Evaluation Report (U-1423/1) is used to: (1) Provide a record of each contractor's performance for future evaluation purposes, (2) advise the contracting officer of the contractor's performance and provide the contracting officer with a basis for taking action, in consultation with the project manager, to avert or correct problems arising under the contract, (3) provide contracting officers and project managers with a means of evaluating contractors under consideration for other AID contracts, and (4) establish and update the Agency's central contractor evaluation file.

(b) The central file, located in the Small Business Division (SDB/SB) of the Office of Small and Disadvantaged Business Utilization, AID/W, constitutes the only official record of the contractor performance evaluation reports available to AID/W or Mission contracting officers and project managers for their use in evaluating contractors under consideration for other AID contracts. Before signing any new contract the AID/W or Mission contracting officer shall contact SDB/SB for information on the evaluation of past performance of the prospective contractor.

2. Applicability of the Evaluation Report (U-1423/1) [1]

The U-1423/1 Report (form AID 1420-43) applies to all AID-direct contracts and task orders, regardless of duration, except the following:

(a) Contracts for normal administrative services by Mission contracting offices and the Office of Management Operations (SER/MO). Examples of administrative services are those provided by interpreters, janitorial or maintenance workers, etc.

(b) Contracts for Interpreter/Escort Services.

(c) Task Orders issued under Agreements with educational institutions

[1] Filed as part of the original document.

when the price paid for training is published in a catalog.

3. Reporting Periods

(a) The initial report covers the first 6-month period of contractor performance from the date the contract is signed. The U-1423/1 Report is due within 30 days after the end of that period.

(b) Thereafter, annual reports are prepared as part of the regularly scheduled project evaluation process and are submitted at the same time as the Project Appraisal Report (PAR) or equivalent.

(c) A final report is due within 30 days after the completion date of the contract. This report provides a summary evaluation of the whole period of contractor performance.

(d) If any contract is for a period of 6 months or less, the U-1423/1 Report is prepared and submitted within 30 days following the completion date of the contract.

4. Preparation and Distribution

(a) The project manager prepares the U-1423/1 Report.

(b) The initial report reflects the project manager's judgment based on observation and contractor progress reports. The final report is a synthesis of preceding evaluations and an overview of total performance.

(c) After completing the U-1423/1 Report, the project manager retains a copy in the official project file, forwards one copy to AID/W project support officer assigned to the project, and forwards the remaining two copies as follows:

(1) If the contract was executed by AID/W, both copies are sent to the Office of Contract Management, Support Division, Support Services Branch (CM/SD/SUP). The Support Services Branch records the date of receipt and forwards both copies to the cognizant contracting officer; or

(2) If the contract was executed by a Mission, both copies are sent directly to the cognizant contracting officer.

5. Contracting Officer Review and Approval

(a) The AID/W or Mission contracting officer signs both copies of Satisfactory or Outstanding Reports sent to him, forwards one copy to AID/W, SDB/SB, through CM/SD/FSR, and retains one for the contract file. By signing the report the contracting officer acknowledges receipt, review, and approval of the report.

(b) In the case of an Unsatisfactory Report, the contracting officer shall furnish the Contractor a copy of same and request his comments prior to reviewing and approving the report. Distribution of the approved report and the Contractor's comments shall be the same as in 5(a) above.

6. Central File Maintenance

SDB/SB is responsible for maintaining the Agency's official central file of Contractor Performance Evaluation Reports (U-1423/1).

[46 FR 31568, June 16, 1981]

Appendix D—Notice to Cost-Reimbursement Type Contractors of Changes in Applicable Standardized Government Regulations

1. General

This appendix establishes a procedure for providing new cost-reimbursement contractors with applicable Government travel and allowance regulations, and for notifying existing contractors, whose contracts require that they be so notified, of changes in such regulations.

2. Background

(a) AID cost-reimbursement type contracts generally provide (see paragraph 3) for the application of direct-hire AID personnel travel and allowance regulations to similarly situated contractor personnel. The procedures for notifying contractors of changes in such regulations are set out in paragraph 5 of this appendix.

(b) For the purpose of this appendix, the term "Chief of Party" refers to either the head of a field party or

such other representative of the contractor in the field designated to communicate on contract matters with the AID Mission.

3. General Provisions for Cost-Reimbursement Contracts

(a) Educational institution contracts. The text of the clause is set forth in § 7-7.5502-12, "Notice of changes in regulations".

(b) Other than educational institution contracts. The text of the clause is set forth in § 7-7.5002-14, "Notice of changes in regulations".

4. Notice to Contractor Field Personnel

Notice of changes in Government travel and allowance regulations is sent to the contractor at his/her address shown on the cover sheet of the contract. Notice to the contractor's Chief of Party is supplied by:

(a) The contractor, in accordance with his/her normal field communication procedures; or,

(b) The Mission Executive Officer, by use of his/her normal internal Mission information procedures. (See paragraph 5(d)(2) of this section).

5. Duties and Responsibilities

(a) *Contracting Officer.* (1) Upon signing each contract, forwards the contract together with three completed copies of form AID 1420-2*, AID Cost-Reimbursement Contract Allowances—Applicability of Standardized Regulations, to the Office of Contract Management, Support Division (Attention: SER/CM/SD/SUP, Statistical Section), indicating on the form whether the contractor needs to be supplied with Government travel and allowance regulations.

(2) If the Government travel and allowance regulations do apply, forwards copy No. 4 of Form AID 1420-2 to the appropriate Mission Executive Officer.

(3) Retains copy No. 5 of form AID 1420-2 for his/her record.

(b) *Statistical Section, SER/CM/SD/SUP.* (1) Maintains a current file on all cost-reimbursement contractors to which the Government travel and allowance regulations apply, and annually supplies a revised list of such contractors to the Office of Management Operations, Distribution Branch (SER/MO/PAV).

(2) Notifies SER/MO/PAV of all changes to the list using form AID 1420-2.

(c) *Distribution Branch, SER/MO/PAV.* (1) Prepares for mailing to each contractor, upon addition of its name to the SER/CM/SD/SUP distribution list, a complete set of the Government travel and allowance regulations.

(2) Following any change in the Government travel or allowance regulations, mails to each contractor on the current SER/CM/SD/SUP distribution list all revisions to such regulations.

(3) Keeps the distribution list, J-27, updated as instructed by SER/CM/SD/SUP.

(d) *Mission Executive Officer.* (1) Maintains a current file of all contracts affected by changes in the Government travel or allowance regulations. (See paragraph 5(a) of this section.)

(2) Promptly notifies each appropriate contractor's Chief of Party in writing of all relevant changes in the Government travel or allowance regulations and their effective date.

[46 FR 31568, June 16, 1981]

Appendix E—Logistic Support Overseas to AID—Direct Contractors

1. General

(a) *Purpose.* In furtherance of AID's objectives to: (1) Increase the utilization of contractors in accordance with section 621 of the Foreign Assistance Act of 1961, as amended, (FAA), (2) reduce the administration burden on the AID establishment in cooperating countries, and (3) ensure, in accordance with section 636(h) of the FAA, that to the maximum extent possible local costs are met from cooperating country funds or United States (U.S.) Government-owned local currency rather than from U.S. dollars, the following policies govern the financing and provision in kind of logistic support overseas to AID-direct contractors.

(b) *Scope.* "Logistic support overseas" means the financing of or furnishing to a contractor, its employees, and their dependents (in accordance with the provisions of the contract) items such as transportation of personnel, personal goods and commodities; quarters, furnishings, equipment, utilities, and supplies for residence and office; and maintenance and other supporting services, including medical facilities.

2. Policy

(a) *Financing of Logistic Support.* (1) *Local Currency Financing.* Consistent with the requirements of AID Handbook 19, Financial Management, local currencies are to be used wherever feasible in lieu of dollars to defray the costs of contractor logistic support, whether such support is arranged for by the contractor, the cooperating country, or AID. Such local currencies will be contributed from the following sources in descending order of preference:

(i) The cooperating country's own budgetary or private resources;

(ii) Cooperating country-owned local currency generated through AID or Pub. L. 480 programs; and

(iii) U.S. Government-owned country-use local currency generated through AID or Pub. L. 480 programs.

(2) *Dollar Financing.* AID dollars are used to finance logistic support overseas only when no reasonable alternative exists by which such support can be financed with local currency or provided in kind.

(b) *Arrangements for Logistics Support.* Each mission should assess the local logistical support situation and determine which method is best suited for its program or individual projects. While the following three options are listed in descending order of preference, the Mission is encouraged to use the option which is in the best interest of the project:

(1) Arrangements by the contractor itself where feasible and reasonably economical. (It is assumed that this test will be met in the case of virtually all construction contracts and in most of the larger engineering and technical assistance contracts.)

(2) Arrangements by the cooperating country where these would be timely, adequate, and feasible in terms of the country's economic and administrative resources.

(3) Arrangements by the mission alone or jointly with either or both of the other parties, in those cases where the Mission Director determines that adequate and timely logistic support at reasonable cost cannot be assured through the other options. In such cases, and when direct hire resources are inadequate, the mission is encouraged wherever feasible, to contract for assistance in providing logistic support. Guidance on logistic support contracts should be obtained from SER/CM and GC.

(c) *Medical Facilities.* AID and the Department of State have an agreement whereby the latter furnishes certain medical services, *on an availability basis,* to all eligible U.S. citizen contract personnel performing economic assistance functions abroad under the Foreign Assistance Act, and to their authorized dependents overseas with funding via Shared Administrative Support (SAS) Budgets. These services are provided at post to such personnel to the same extent as for AID direct-hire personnel. They are provided at no cost to the contractor or to the personnel. The medical services to be provided exclude: (1) Evacuation or hospitalization, and (2) entrance, in-service, fitness for duty, and separation medical examinations.

(1) *Eligible Personnel.* (i) Eligible contractor personnel are those U.S. citizens serving abroad, and their authorized dependents, who are engaged under a contract between a contractor and AID or who are engaged under a subcontract thereto.

(ii) Employees of other U.S. Government agencies serving under Participating Agency Service Agreement (PASA's) with AID are also eligible pursuant to the terms of General Agreements between AID and their parent agencies.

(iii) U.S. citizens serving under cooperating country contracts financed from AID loan or grant funds *are not* "AID contractor employees" and thus not eligible. Third country national employees of AID contractors are not

U.S. citizens and thus are not eligible. Americans serving under operational expert (OPEX) type contracts to which AID is not a signatory are also not "AID contractor employees." Most OPEX employees are provided a lump-sum amount to finance their participation in a group health program in lieu of receiving any U.S. Government health services.

(iv) AID or other direct-hire U.S. Government employees working under formal detail to multilateral or other non-U.S. agencies obtain health services on the same basis as their non-U.S. co-workers unless the provisions governing detail of the U.S. employees specifically provide for their access to available U.S. Government facilities.

(v) It is recognized that emergency situations will arise involving OPEX or other Americans who are not "AID contractor personnel" as defined above. Such cases are to be handled by the Medical Officer or other post officials pursuant to their procedures for handling an emergency health problem of any non-official American requesting assistance.

(2) *Services To Be Provided.* Embassy physician, nurse, and health room services are provided, in countries where and when these are available, including:

(i) Immunizations and preventive health measures;

(ii) Diagnostic examinations and advice;

(iii) Emergency treatment;

(iv) Home visits as medically indicated.

(d) *Other Post Privileges.* Privileges such as the use of APO, PX's, commissaries, and officers clubs are established at posts abroad pursuant to agreements between the U.S. and cooperating governments. Normally, these facilities *are not* available to contractor employees. However, in those cases where the facilities are open to contractor personnel, they may be used.

(e) *Uniformity.* Every effort should be made by each mission to foster the development of country-wide standards for comparable classes of contractors. In all instances, logistic support is to be provided at the minimum level necessary to assure efficient, economical, and effective contractor performance.

(f) *Exceptions.* Exceptions from these policies, except as permitted by paragraph 2(b)(3) above, are made in writing by the responsible Assistant Administrator or his designee for such purposes.

3. Contract Implementation

Each PIO/T shall indicate on page 3 each type of logistic support which is to be made available, either in cash or in kind, by the cooperating country, the mission, and the contractor itself. The contracting officer shall ensure that the contract reflects the information contained in the PIO/T.

4. Additional Instructions for Medical Support

(a) *Notifications.* (1) The AID contracting officer shall notify the contractor of any potentially available medical benefits prior to the execution of the contract.

(2) The Mission Executive Officer notifies the contractor's Chief of Party at the post of the locally available medical benefits.

(b) *Identification of Eligible Persons.* The Mission Executive Officer provides each eligible contractor employee and dependent with appropriate identification for use at Embassy medical facilities.

(c) *Records and Insurance.* (1) The Embassy medical unit maintains an appropriate register of visits to the unit. The information recorded includes the name of the contractor employee or dependent treated, the contractor's name and contract number, date of visit, and a brief description of the reason for the visit (e.g., medical consultation, injury, medical briefing, immunization). Periodically a copy of this register is forwarded to the Mission Executive Officer.

(2) If medical service provided to a contractor employee or his authorized dependents by the Embassy medical unit is eligible for recovery from an insurance company, the contractor employee shall file an appropriate claim with the insurance company and so notify the Mission Executive Officer in writing. The contractor employee

pursues the claim for reimbursement. Amounts recovered are forwarded to the Mission Executive Officer for the account of the medical unit in accordance with AID regulations.

[46 FR 31566, June 16, 1981, as amended at 46 FR 62278, Dec. 23, 1981]

Appendix F—Direct AID Contracts With U.S. Citizens or U.S. Residents for Personal Services Abroad

1. General

(a) *Purpose.* This appendix and attachments set forth the authority, policy, and provisions under which AID may contract with individual U.S. citizens or U.S. residents to provide personal services abroad.

(b) *Definitions.* For the purposes of this appendix:

(1) A personal services contract is one which establishes an employer-employee relationship.

(2) A nonpersonal services contract is one which establishes an independent contractor relationship.

2. Legal Basis

(a) Section 635(b) of the Foreign Assistance Act of 1961, as amended (FAA), provides specific contracting authority for AID.

(b) Section 636(a)(3) of the FAA authorizes the Agency to enter into contracts with individuals for personal services abroad and provides further that such individuals "shall not be regarded as employees of the U.S. Government for the purpose of any law administered by the Civil Service Commission."

3. Applicability

(a) This appendix applies to AID contracts with U.S. citizens or U.S. residents to provide assistance abroad to cooperating countries and regional organizations under contracts which establish an employer-employee relationship. Attachment A is designed to establish that relationship.

(b) This Appendix does not apply to:

(1) Contracts with U.S. citizens or U.S. residents which establish independent contractor relationships, which are covered under *AID Handbook 14—Procurement Regulations.*

(2) Contracts with consultants and experts, which are covered under *AID Handbook 25—Employment and Promotion.*

(3) Contracts with individual cooperating country or third-country nationals, which are covered under *AID Handbook 31—Foreign National Personnel.*

4. Policy

(a) *General.* AID may finance the cost of providing personal services to a cooperating country or a regional organization as part of the Agency's program of assistance to such country or organization by entering into a direct contract with an individual U.S. citizen or U.S. resident for personal services.

(b) *Limitations on Personal Services Contracts*—A personal services contract with an individual may be used when adequate supervision is available and for nearly any type of work except:

(1) Negotiating on behalf of the United States with AID recipient countries, organizations or entities.

(2) Making planning, budgeting, programming and policy decisions which determine the allocation of resources available to AID, or establish AID policy.

(3) Supervising the execution of functions performed by U.S. Government personnel of AID or other Government agencies.

(4) Performance of internal functions such as personnel selection and administration, agency management, and congressional presentation.

(5) Contracts entered into pursuant to this authority may not exceed 5 years.

5. Executing a Personal Services Contract

Procuring activities, whether AID/W or Mission, may execute personal services contracts, provided that the amount of the contract does not exceed the amount of contracting authority which has been redelegated pursuant to Delegation of Authority No. 99—To the Assistant Administra-

tor for Program and Management Services, et al., Concerning Contracting and Related Functions (38 FR 12834). In executing a contract, the procuring activity insures that:

(a) The following approvals for the proposed contractor have been obtained:

(1) Security clearance, to the extent required by *AID Handbook 6—Security.*

(2) Mission and country clearance, as appropriate.

(3) Medical clearance based on certification by a licensed physician. Medical clearance requirements apply to the contractor and to each dependent who is authorized to travel to the overseas post.

(b) Compensation for personal services provided under each contract complies with the principles and approvals set forth in the AID Procurement Regulations, § 7-15.205-6, entitled Compensation for Personal Services, in effect at the time the contract is executed (See Appendix I).

(c) The contract is modified by deleting from the General Provisions the inapplicable portion of the clauses entitled, "Allowances, Travel and Transportation Expenses," and the medical clearance of dependents residing with the contractor at post, when the contractor is a resident of the cooperating country.

(d) The block entitled, "Project No.," on the cover page of the contract format is completed by inserting the four-segment project number as prescribed in *AID Handbook 18—Information Services.*

(e) Necessary deviations from the prescribed contract format are properly documented and approved by the head of the procuring activity (see § 7-1.107 of the AID Procurement Regulations). A record of the nature of each such deviation, the justification for it, and the approval are included in the contract file and a copy is forwarded to the Office of Contract Management, Support Division (SER/CM/SD), AID/W, which is responsible for maintaining a central record of all approved deviations.

(f) Funds for the contract are properly obligated to preclude violation of the Anti-Deficiency Act, 31 U.S.C. 665. The contracting officer assures that the contract has been properly recorded by the appropriate accounting office prior to its release for the signature of the selected contractor.

(g) The contractor receives and understands Chapter 3, Employee Responsibilities and Conduct, of *AID Handbook 24—General Personnel Policy,* and a copy is attached to each contract, as provided for in paragraph 2(c) of the General Provisions (Attachment B).

(h) Agency conflict of interest requirements are met by the contractor prior to his/her reporting for duty.

6. Post Audit

The Inspector General, or his designee, audits the personal services contracts of all procuring activities for the purpose of insuring conformance to approved policy and standards.

7. Contract Provisions

The attachments referred to in paragraph 1(a) above are the personal services contract formats and clauses. They are:

Attachment A—AID form 1420-36, "Schedule";

Attachment B—AID form 1420-37, "General Provisions"; and

Attachment C—AID form 1420-38, "Additional General Provisions".

ATTACHMENT A—CONTRACT WITH A U.S. CITIZEN OR U.S. RESIDENT FOR PERSONAL SERVICES ABROAD

AGENCY FOR INTERNATIONAL DEVELOPMENT

WASHINGTON D.C. 20523

Negotiated Pursuant to the Foreign Assistance Act of 1961, as Amended, and Executive Order 11223	Contract Number
Country of Performance	Amount Obligated $
	Total Estimated Contract Cost $
Contract For	Project Number
Contracting Office (*name and address*)	Contractor (*name, street, city, state, zip code*)
Administered by (*if other than Contracting Office*)	Effective Date Estimated Completion Date
Cognizant Scientific/Technical Office (*name, office symbol, address*)	Accounting and Appropriation Data PIO/T Number ———
This is a Consulting Services Contract (*AIDPR 7-4.804-50*) ☐ YES ☐ NO	Appropriation Number ———
This is a Contract for Studies and/or Reports (*AIDPR 7-4.804-50*) ☐ YES ☐ NO	Budget Plan Code ———
Payment Will be Made By	Social Security Number ——— Type of Advance (*"X" appropriate box*) ☐ INITIAL ☐ NONE AUTHORIZED

The United States of America, hereinafter called the Government, represented by the Contracting Officer executing this contract, and the Contractor agree that the Contractor shall perform all the services set forth in the attached Schedule, for the consideration stated therein. The rights and obligations of the parties to this contract shall be subject to and governed by the Schedule and the General Provisions. To the extent of any inconsistency between the Schedule or the General Provisions and any specifications or other provisions which are made a part of this contract, by reference or otherwise, the Schedule and the General Provisions shall control. To the extent of any inconsistency between the Schedule and the General Provisions, the Schedule shall control.

(*Fill in appropriate spaces*)

This Contract consists of this Cover Page, the Schedule of —— pages, including the Table of Contents, the General Provisions (form AID 1420-37, dated ————), the Additional General Provisions (form AID 1420-38, dated ————), and the alterations in Contract Attachments, dated ————.

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	UNITED STATES OF AMERICA AGENCY FOR INTERNATIONAL DEVELOPMENT
Signature of Contractor	By (*Signature of Contracting Officer*)
Typed or Printed Name	Typed or Printed Name
Date	Date

AID 1420-36 (10-81)

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TABLE OF CONTENTS

SCHEDULE

CONTRACT NO. ———

The Schedule on pages 2 through 5 consists of this Table of Contents and the following Articles:

ARTICLE I—STATEMENT OF DUTIES
ARTICLE II—PERIOD OF SERVICE OVERSEAS
ARTICLE III—CONTRACTOR'S COMPENSATION AND REIMBURSEMENT IN U.S. DOLLARS
ARTICLE IV—COSTS REIMBURSABLE AND LOGISTIC SUPPORT
ARTICLE V—PRECONTRACT EXPENSES
ARTICLE VI—ADDITIONAL CLAUSES

GENERAL PROVISIONS

The following provisions, numbered as shown below, omitting number(s) ———, are the General Provisions (GP) of this Contract:

1. Definitions
2. Laws and Regulations Applicable Abroad
3. Physical Fitness
4. Workweek
5. Leave and Holidays
6. Differential and Allowances
7. Social Security and Federal Income Tax
8. Advance of Dollar Funds
9. Insurance
10. Travel and Transportation Expenses
11. Payment
12. Conversion of U.S. Dollars to Local Currency
13. Post of Assignment Privileges
14. Security Requirements
15. Contractor-Mission Relationships
16. Termination
17. Disputes
18. Release of Information
19. Officials Not to Benefit
20. Covenant Against Contingent Fees
21. Notices
22. Reports

For a tour of duty of 1 year or more, "Additional General Provisions (AGP)" will be attached and be applicable to this contract. References to individual clauses should specify, for example, "GP 9" (insurance), or "AGP 9" (termination).

SCHEDULE

[NOTE: Use of the following Schedule articles are not mandatory. They are intended to serve as guidelines for contracting offices in drafting contract schedules. Article language may be changed to suit the needs of the particular contract.]

ARTICLE I—STATEMENT OF DUTIES

[The statement of duties shall include:
A. General statement of the purpose of the contract.
B. Statement of duties to be performed.
C. Any AID consultation or orientation.]

ARTICLE II—PERIOD OF SERVICE OVERSEAS

Within ——— days after written notice from the Contracting Officer that all clearances, including the doctor's certificate required under General Provisions Clause 3, have been received or unless another date is specified by the Contracting Officer in writing, the contractor shall proceed to ——— where he/she shall promptly commence performance of the duties specified above. The contractor's period of service overseas shall be approximately ——— in ———. (Specify time of duties in each location as well as authorized stopovers with purpose of each.)

ARTICLE III—CONTRACTOR'S COMPENSATION AND REIMBURSEMENT IN U.S. DOLLARS

A. Except to the extent reimbursement therefor is payable in the currency of the cooperating country pursuant to Article IV, AID shall pay the contractor compensation after it has accrued and reimburse him/her in U.S. dollars for necessary and reasonable costs actually incurred by him/her in the performance of this contract within the categories listed in paragraph C, below, and subject to the conditions and limitations applicable thereto as set out herein and in the attached General Provisions (GP).

B. The amount budgeted and available as personal compensation to the contractor is calculated to cover a calendar period of approximately ——— (days) (weeks) (months) (years) (which is to include (1) vacation, sick, and home leave which may be earned during the contractor's tour of duty (GP Clause No. 5, AGP Clause No. 4), (2) ——— days for

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authorized travel (GP Clause 10(b)), and (3) ———— days for orientation and consultation in the United States.

C. Allowable Costs.

[In dollars]

1. *Compensation* at the rate of $———— per (year) (month) (week) (day). Adjustments in compensation for periods when the contractor is not in compensable pay status shall be calculated as follows: Rate of $———— per (day) (hour)		
2. *Overtime* (Unless specifically authorized in the Schedule of this contract, no overtime hours shall be allowed hereunder.)		
3. *Overseas Differential* (Ref. GP Clause No. 6.) Rate ———— $		
*4. *Allowances in Cooperating Country* (Ref. GP Clause 6 and AGP Clause 5.)		
*5. *Travel and Transportation* (Ref. GP Clause 10 and AGP Clause 6.) (Includes the value of GTRs furnished by the Government, not payable to Contractor):		
a. United States		
b. International		
c. Cooperating and Third Country		
Subtotal Item 5		
*6. *Subsistence or Per Diem* (Ref. GP Clause 10 and AGP Clause 6.):		
a. United States		
b. International		
c. Cooperating and Third Country		
Subtotal Item 6		
7. *Other Direct Costs:*		
a. Health and Life Insurance (Ref. GP Clause 9-b)		
b. Precontract Costs, passport, visa, inoculations, etc. (Ref. GP Clause 8)		
c. Physical Examination (Ref. GP Clause 3 and AGP Clause 3.)		
d. Communications, Miscellaneous		
Subtotal Item 7		
8. *F.I.C.A.*—U.S.G. contribution (not payable to contractor)		
Total Estimated Costs (lines 1 thru 8)		

*Do not include the value of any costs to be paid or reimbursed in local currency.

D. Maximum U.S.-Dollar Obligation.

In no event shall the maximum U.S.-dollar obligation under this contract exceed $————. Contractor shall keep a close account of all obligations he/she incurs and accrues hereunder and promptly notify the Contracting Officer whenever in his/her opinion the said maximum is not sufficient to cover all compensation and costs reimbursable in U.S. dollars which he/she anticipates under the contract.

Article IV—Costs Reimbursable and Logistic Support

A. *General*

The contractor shall be provided with or reimbursed in local currency (————) for the following:

[Complete]

B. *Method of Payment of Local Currency Costs*

Those contract costs which are specified as local currency costs in paragraph A. above, if not furnished in kind by the cooperating government or the Mission, shall be paid to the contractor in a manner adapted to the local situation, based on vouchers submitted in accordance with General Provisions Clause 11. The documentation for such costs shall be on such forms and in such manner as the Mission Director shall prescribe.

C. *Cooperating or U.S. Government-Furnished Equipment and Facilities*

List any logistical support, equipment, and facilities to be provided by the cooperating government or the U.S. Government at no cost to this contract; e.g., office space, supplies, equipment, secretarial support, etc., and the conditions, if any, for use of such equipment.

Article V—Precontract Expenses

No expense incurred before execution of this contract will be reimbursed unless such expense was incurred after receipt and acceptance of a precontract expense letter issued to the contractor by the Contracting Officer, and then only in accordance with the provisions and limitations contained in such letter. The rights and obligations created by such letter shall be considered as merged into this contract.

Article VI—Additional Clauses

[Additional Schedule clauses may be added, such as the implementation of General Provisions or Additional General Provisions clauses.]

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ATTACHMENT B—GENERAL PROVISIONS—CONTRACT WITH A U.S. CITIZEN OR U.S. RESIDENT FOR PERSONAL SERVICES ABROAD

To be used on tours of duty of less than 1 year. For tours of duty of 1 year or more these "General Provisions" will be supplemented by "Additional General Provisions."

INDEX OF CLAUSES

1. Definitions.
2. Laws and Regulations Applicable Abroad.
3. Physical Fitness.
4. Workweek.
5. Leave and Holidays.
6. Differential and Allowances.
7. Social Security and Federal Income Tax.
8. Advance of Dollar Funds.
9. Insurance.
10. Travel and Transportation Expenses.
11. Payment.
12. Conversion of U.S. Dollars to Local Currency.
13. Post of Assignment Privileges.
14. Security Requirements.
15. Contractor-Mission Relationships.
16. Termination.
17. Disputes.
18. Release of Information.
19. Officials Not to Benefit.
20. Convenant Against Contingent Fees.
21. Notices.
22. Reports.
23. Use of Pouch Facilities.

1. DEFINITIONS

(a) "Administrator" means the Administrator or the Deputy Administrator of the Agency for International Development.

(b) "AID" means the Agency for International Development.

(c) "Contracting Officer" means the person executing this Contract on behalf of the U.S. Government, or his successor who is a properly designated Contracting Officer; and the term includes, except as otherwise provided in this Contract, the authorized representative of a Contracting Officer acting within the limits of his authority.

(d) "Contractor" means the individual engaged to serve in the cooperating country under this Contract.

(e) "Cooperating country" means the foreign country in or for which services are to be rendered hereunder.

(f) "Cooperating government" means the government of the cooperating country.

(g) "Economy class" air travel (also known as jet-economy, air coach, tourist-class, etc.) means a class of air travel which is less than first class.

(h) "Government" means the United States Government.

(i) "Local currency" means the currency of the cooperating country.

(j) "Mission" means the United States AID Mission to, or principal AID office in, the cooperating country.

(k) "Mission Director" means the principal officer in the Mission in the cooperating country, or his designated representative.

(l) "Tour of duty" means the Contractor's period of service under this Contract and shall include orientation in the United States (less language training), authorized leave, and international travel.

(m) "Traveler" means the Contractor in authorized travel status.

(n) "Project Officer" means the AID official to whom the Contractor reports, and who is responsible for monitoring the Contractor's performance.

(o) "U.S. Resident", as used in this contract, means an alien immigrant, legally resident in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and having a valid "Alien Registration and Receipt Card" (Immigration and Naturalization Service forms I-151 or I-551).

2. LAWS AND REGULATIONS APPLICABLE ABROAD

(a) *Conformity to Laws and Regulations of the Cooperating Country.*

Contractor agrees that, while in the cooperating country, he shall abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) *Purchase or Sale of Personal Property or Automobiles.*

To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles in the cooperating country by the Contractor shall be subject to the same limitations and prohibitions which apply to Mission U.S.-citizen direct-hire employees.

(c) *Code of Conduct.*

The Contractor shall, during his tour of duty under this Contract, be considered an "employee" (or if his tour of duty is for less than 130 days, a "special Government employee") for the purposes of, and shall be subject to, the provisions of AID Handbook 24, Chapter 3. The Contractor acknowledges receipt of a copy of said provisions by his acceptance of this Contract.

3. PHYSICAL FITNESS

The Contractor shall be required to be examined by a licensed doctor of medicine and the Contractor shall obtain from the doctor a certificate that, in the doctor's opinion, the Contractor is physically qualified to engage in the type of activity for which he is to be employed under the Contract and is

physically qualified to reside in the cooperating country. A copy of the certificate shall be provided to the Contracting Officer prior to the Contractor's departure for the cooperating country or if this Contract is entered into in the cooperating country, the Contractor shall provide the certificate before he starts work under the Contract. The Contractor shall be reimbursed not to exceed $85 for the cost of the physical examination, plus reimbursement of charges for immunizations.

4. WORKSHEET

The Contractor's workweek shall not be less than 40 hours, unless otherwise provided in the Schedule, and shall coincide with the workweek for those employees of the Mission or the cooperating country agency most closely associated with the work of this Contract. If the Contract is for less than full time (40 hours weekly), the leave earned shall be prorated.

5. LEAVE AND HOLIDAYS

(a) *Vacation Leave.*

(1) The Contractor shall earn vacation leave at the rate of 13 workdays per annum or 4 hours every 2 weeks. However, no vacation shall be earned if the tour of duty is less than 90 days.

(2) It is understood that vacation leave is provided under this Contract primarily for the purposes of affording necessary rest and recreation during the tour of duty in the cooperating country. All vacation leave earned by the Contractor will be used during the Contractor's tour of duty. Unless approved by the Contracting Officer or Mission Director, the maximum amount of vacation leave which the Contractor may take following the completion of his services overseas shall be limited to vacation leave earned by the Contractor during a 6-month period.

(b) *Sick Leave.*

Sick leave is earned at a rate not to exceed 13 workdays per annum or 4 hours every 2 weeks. Unused sick leave may be carried over under an extension of this Contract but the Contractor will not be compensated for unused sick ledave at the completion of this Contract.

(c) *Leave Without Pay.*

Leave without pay may be granted only with the written approval of the Contracting Officer or Mission Director.

(d) *Holidays.*

The Contractor, while serving abroad, shall be entitled to all holidays granted to U.S.-citizen direct-hire employees by the Mission who are on comparable assignments.

6. DIFFERENTIAL AND ALLOWANCES

The following differential and allowances will be granted to the Contractor to the same extent and on the same basis as they are granted to U.S.-citizen direct-hire employees at the Mission by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended, except as noted to the contrary below:

	Applicable reference to standardized regulations
(a) Post differential	Chapter 500 and tables in chapter 900.
(b) Living quarters allowance	Section 130.
(c) Temporary lodging allowance	Section 120.
(d) Post allowance	Section 220.
(e) Supplemental post allowance	Section 230.
(f) Payments during evacuation	Section 600.

The allowances provided in paragraphs (b) and (e) above shall be paid to the Contractor in dollars or in the currency of the cooperating country in accordance with the practice prevailing at the Mission, or the Mission Director may direct that the Contractor be paid a per diem in lieu thereof as prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

7. SOCIAL SECURITY AND FEDERAL INCOME TAX

F.I.C.A. contributions and U.S. Federal Income Tax withholding shall be deducted in accordance with regulations and rulings of the Social Security Administration and the U.S. Internal Revenue Service, respectively.

8. ADVANCE OF DOLLAR FUNDS

If requested by the Contractor and authorized in writing by the Contracting Officer, AID will arrange for an advance of funds to defray the initial cost of travel, travel allowances, authorized precontract expenses, and shipment of personal property. The advance shall be granted on the same basis as to an AID U.S.-citizen direct-hire employee in accordance with AID Handbook 22, Chapter 4.

9. INSURANCE

(a) *Workmen's Compensation Benefits.*

The Contractor shall be provided workmen's compensation benefits in accordance with the Federal Employees Compensation Act.

(b) *Health and Life Insurance.*

The Contractor shall be reimbursed for the cost of personal health and life insurance premiums not to exceed $175 per annum.

(c) *Insurance on Private Automobiles.*

If the Contractor or his dependents transport, or cause to be transported, privately owned automobile(s) to the cooperating country, or any of them purchase an auto-

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mobile within the cooperating country, the Contractor agrees to insure that all such automobile(s) during such ownership within the cooperating country will be covered by a paid-up insurance policy issued by a reliable company providing the following minimum coverages, or such other minimum coverages as may be set by the Mission Director, payable in U.S. dollars or its equivalent in the currency of the cooperating country: injury to persons, $10,000/$20,000; property damage, $5,000. The Contractor further agrees to deliver, or cause to be delivered to the Mission Director, the insurance policies required by this clause or satisfactory proof of the existence thereof, before such automobile(s) is operated within the cooperating country. The premium costs for such insurance shall not be a reimbursable cost under this Contract.

(d) *Claims for Private Personal Property Losses.*

The Contractor shall be reimbursed for private personal property losses in accordance with AID Handbook 23, "Overseas Support", Chapter 10.

10. TRAVEL AND TRANSPORTATION EXPENSES

(a) *General.*

AID/Washington Office of Management Operations, or such other office as may be designated by that office, may furnish Transportation Requests (TR's) to the Contractor for transportation originating in the United States authorized by this Contract, and the executive or administrative officer at the Mission may furnish TR's for such authorized transportation which is payable in local currency or is to originate overseas. When transportation is not provided by Government-issued TR, the Contractor shall procure his own transportation, the costs of which will be reimbursed in accordance with the following:

(b) *Travel and Transportation.*

(1) *U.S. Travel and Transportation.*

The Contractor shall be reimbursed for actual transportation costs and travel allowances in the United States as authorized in the Schedule or approved in advance by the Contracting Officer or the Mission Director. Transportation costs and travel allowances shall not be reimbursed in any amount greater than the cost of, and time required for, economy-class commercial-scheduled air travel by the most expeditious route except as otherwise provided in paragraph (6) below, unless economy air travel is not available and the Contractor certifies to this in his voucher or other documents submitted for reimbursement.

(2) *International Travel.*

(i) The Contractor shall be reimbursed for actual transportation costs and travel allowances from place of residence in the United States (or other location, provided that the cost of such travel does not exceed the cost of travel from the place of residence), to post of duty in the cooperating country and return to place of residence in the United States (or other location, provided that the cost of such travel does not exceed the cost of travel from the post of duty to the place of residence) upon completion of his duties. Such transportation costs shall not be reimbursed in an amount greater than economy-class commercial-scheduled air travel by the most expeditious route, except as otherwise provided in paragraph (b)(6) below and unless economy air travel is not available and the Contractor certifies to the facts in the voucher or other documents he submits for reimbursement. When travel to or from the cooperating country is by economy-class accommodations, the Contractor will be reimbursed for the costs of transporting up to 22 pounds gross weight of accompanied personal baggage in addition to that regularly allowed with the economy ticket, provided that the total number of pounds of baggage does not exceed that regularly allowed for first-class travelers. Travel allowances shall be at the rate of $6 per day for not more than the travel time required by scheduled economy-class commercial air carrier using the most expeditious route and computed in accordance with the Federal Travel Regulations, as from time to time amended. One stopover en route for a period not to exceed 24 hours is allowable when the Contractor uses economy-class accommodations for a trip of 14 hours or more of scheduled duration. Such stopover shall not be authorized when travel is by indirect route for the convenience of the Contractor. Per diem during authorized stopover shall be paid in accordance with the Federal Travel Regulations, as from time to time amended.

(ii) *Unaccompanied Baggage.*

Except as provided in the Schedule or approved by the Contracting Officer, the Contractor who is on a tour of duty of 90 days or more under this Contract shall be reimbursed for the cost of unaccompanied personal effects not to exceed 250 pounds gross weight via airfreight from place of residence in the United States (or other location, provided that the cost of such shipment does not exceed the cost of shipment from the place of residence) to post of duty in the cooperating country and return to place of residence in the United States (or other location, provided that the cost of such shipment does not exceed the cost of shipment from the post of duty to the place of residence) upon completion of his duties.

(iii) *Local Travel.*

The Contractor shall be reimbursed at the rates established by the Mission Director for authorized travel in the cooperating country in connection with duties directly referable to work under this Contract. In the absence of such established rates, the

Contractor shall be reimbursed for actual costs of authorized travel in the cooperating country if not provided by the cooperating government or the Mission in connection with duties directly referable to work hereunder, including travel allowances at rates prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

(iv) *Special International Travel and Third-Country Travel.*

For special travel which (*1*) advances the purpose of the Contract, (*2*) is not otherwise provided by the cooperating government, and (*3*) has the prior written approval of the Contracting Officer or the Mission Director, the Contractor shall be reimbursed for (i) the costs of international transportation other than between the United States and the cooperating country and for local transportation within other countries, and (ii) travel allowances while in official travel status and while performing services under the Contract in such other countries at rates prescribed by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended.

(v) *Indirect Travel for Personal Convenience.*

(*1*) When travel is performed by an indirect route for the personal convenience of the traveler, the allowable costs of such travel will be computed on the basis of the cost of economy class air fare via the direct usually traveled route between the authorized points of departure and destination.

(*2*) If such costs include fares for air or ocean transportation by foreign-flag carriers, approval for indirect travel by such foreign-flag carrier pursuant to paragraph (ix)(*1*) below must be obtained from the Contracting Officer or the Mission Director before such travel is undertaken, otherwise only that portion of travel accomplished by U.S.-flag carriers will be reimbursable within the above limitation of allowable costs.

(vi) *Delays En Route.*

The Contractor may be granted reasonable delays en route while in travel status, not circuitous in nature, which are caused by events beyond the control of the Contractor. It is understood that if the delay is caused by physical incapacitation, the Contractor shall be eligible for such sick leave as is provided under GP Clause No. 5(b) of this Contract.

(vii) *Privately Owned Automobiles (POV).*

(*1*) If travel by POV is authorized in the Schedule or approved by the Contracting Officer, the Contractor shall be reimbursed for the cost of travel in his privately owned automobile at the rate per mile equal to the rate authorized a U.S. Government employee in equivalent circumstances, plus authorized per diem, if the automobile is being driven in connection with (A) authorized orientation, (B) authorized duties under this Contract, or (C) en route to or from the cooperating country provided that the total cost of the mileage and the per diem to the Contractor shall not exceed the total constructive cost of fare and normal per diem by (1) surface common carrier or (2) less than first-class air, whichever is the lesser.

(*2*) Cost of the shipment of automobiles for Contract tours of duty of less than 1 year are not reimbursable under this Contract.

(viii) *Emergency and Irregular Travel and Transportation.*

Actual transportation costs and travel allowances while en route, as provided in this section, shall be reimbursed under the following conditions:

(*1*) Subject to the prior written approval of the Mission Director, the costs of going from post of duty in the cooperating country to the United States or other approved location for the Contractor when, because of reasons or conditions beyond his control, the Contractor has not completed his required service in the cooperating country. The Mission Director may also authorize the return to the cooperating country of such Contractor.

(*2*) It is agreed that paragraph (viii)(*1*) above includes, but is not necessarily limited to, the following:

1. Need for medical care beyond that available within the areas to which the Contractor is assigned.

2. Serious effect on physical or mental health if residence is continued at assigned post of duty.

3. Serious illness, injury, or death of a member of the Contractor's immediate family. Travel shall be authorized in accordance with emergency visitation travel granted to U.S.-citizen direct-hire employees under Chapter 699 of the Standardized Regulations (Government Civilians, Foreign Areas).

4. Emergency evacuation, when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Allowances at safe haven when authorized by the Mission Director shall be payable in accordance with established Government Regulations.

5. Preparation and return of the remains of a deceased Contractor.

(ix) *Preference for U.S. Flag Air Carriers (Jan. 1977).*

(*1*) Pub. L. 93-623 requires that all Federal agencies and Government contractors and subcontractors will use U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available. It further provides that the Comptroller General of the United States shall disallow any expenditure from appropriated funds for international air transpor-

tation on other than a U.S. flag air carrier in the absence of satisfactory proof of the necessity therefor.

(2) The contractor agrees to utilize U.S. flag air carriers for international air transportation of personnel (and their personal effects) or property to the extent service by such carriers is available.

(3) In the event that the contractor selects a carrier other than a U.S. flag air carrier for international air transportation, he will include a certification on vouchers involving such transportation which is essentially as follows:

Certification of Unavailability of U.S. Flag Air Carriers

I hereby certify that transportation service for personnel (and their personal effects) or property by certificated air carrier was unavailable for the following reasons: (state reasons) [1]

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[1] NOTE: FPR 1-1.323-3, requires that expenditures for service furnished by a noncertificated air carrier generally will be allowed only when service by a certificated air carrier or carriers is "unavailable" as indicated by the June 17, 1975, Comptroller General's memorandum (B-138942) entitled "Guidelines for Implementation of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974". The criteria contained in the memorandum are reproduced below:

(a) Passenger or freight service by a certificated air carrier is considered "available" even though:

(1) Comparable or a different kind of service by a noncertificated air carrier costs less, or

(2) Service by a noncertificated air carrier can be paid for in excess foreign currency, or

(3) Service by a noncertificated air carrier is preferred by the agency or traveler needing air transportation, or

(4) Service by a noncertificated air carrier is more convenient for the agency or traveler needing air transportation.

(b) Passenger service by a certificated air carrier will be considered to be "unavailable":

(1) When the traveler, while en route has to wait 6 hours or more to transfer to a certificated air carrier to proceed to the intended destination, or

(2) When any flight by a certificated air carrier is interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, etc., and no other flight by a certificated air carrier is available during the 6 hour period, or

(3) When by itself or in combination with other certificated or noncertificated air carriers (if certificated air carriers are "unavailable") it takes 12 or more hours longer from the original airport to the destination airport to accomplish the agency's mission than would service by a noncertificated air carrier or carriers.

(4) When the elapsed traveltime on a schedule flight from origin to destination airports by noncertificated air carrier(s) is 3 hours or less, and service by certificated air carrier(s) would involve twice such scheduled traveltime.

(4) The terms used in this clause have the following meanings:

(A) "International air transportation" means transportation of persons (and their personal effects) or property by air between a place in the United States and a place outside thereof or between two places both of which are outside the United States.

(B) "U.S. flag air carrier" means one of a class of air carriers holding a certificate of public convenience and necessity issued by the Civil Aeronautics Board, approved by the President, authorizing operations between the United States and/or its territories and one or more foreign countries.

(C) The term "United States" includes the fifty states, Commonwealth of Puerto Rico, possessions of the United States, and the District of Columbia.

(x) The contractor shall include the substance of this clause, including this paragraph (x), in each subcontract or purchase hereunder which may involve international air transportation.

11. PAYMENT

(a) Once each month (or at more frequent intervals, if approved by the paying office indicated on the Cover Page), the Contractor may submit to such office form SF 1034 Public Voucher for Purchases and Services Other Than Personal (original) and SF 1034-A (three copies), each voucher identified by the AID contract number, properly executed in the amount of dollars claimed during the period covered. The voucher forms shall be supported by:

(1) The Contractor's detailed invoice, in original and two copies indicating, for each amount claimed, the paragraph of the Contract under which payment is to be made, supported when applicable as follows:

(i) *For compensation*—a statement showing period covered, days worked, and days when Contractor was in authorized travel, leave, or stopover status for which compensation is claimed. All claims for compensation will be accompanied by, or will incorporate, a certification signed by the Project Officer covering days or hours worked, or authorized travel or leave time for which compensation is claimed.

(ii) *For travel and transportation*—a statement of itinerary with attached carrier's receipt and/or passenger's coupons, as appropriate.

(iii) *For reimbursable expenses*—an itemized statement supported by original receipts.

(2) The first voucher submitted shall include a fully executed Form W-4, Employees Withholding Exemption Certificate, to permit required withholding by AID, such as Federal Income Tax, F.I.C.A. deductions, and, when applicable, state income tax. The first voucher shall also account for, and liquidate the unexpended balance of, any funds theretofore advanced to the Contractor.

(b) A final voucher shall be submitted by the Contractor promptly following completion of the duties under this Contract but in no event later than 120 days (or such longer period as the Contracting Officer may in his discretion approve in writing), from the date of such completion. The Contractor's claim, which includes his final settlement of compensation, shall not be paid until after the performance of the duties required under the terms of this Contract has been approved by AID. On receipt and approval of the voucher designated by the Contractor as the "final voucher" submitted on form SF 1034 (original) and SF 1034-A (three copies), together with a refund check for the balance remaining on hand of any funds which may have been advanced to the Contractor, the Government shall pay any amounts due and owing the Contractor.

12. Conversion of U.S. Dollars to Local Currency

Upon arrival in the cooperating country, and from time to time as appropriate, the Contractor shall consult with the Mission Director or his authorized representative who shall provide, in writing, the policy the Contractor shall follow in the conversion of U.S. dollars to local currency. This may include, but not be limited to, the conversion of said currency through the cognizant U.S. Disbursing Officer, or Mission Controller, as appropriate.

13. Post of Assignment Privileges

(a) Health room services are generally available for Contractor at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services do include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

(b) Privileges such as the use of APO, PX's, commissaries and officer's clubs are established at posts abroad pursuant to agreements between the U.S. and host governments. These facilities are intended for and usually limited to members of the official U.S. establishment including the Embassy, AID Mission, U.S. Information Service and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans.

14. Security Requirements

(a) The provisions of the following paragraphs of this clause shall apply to the extent that this Contract involves access to classified information ("Confidential," "Secret," or "Top Secret") or access to administratively controlled information ("Limited Official Use"). Contractors that are not U.S. citizens shall not have access to classified or administratively controlled information.

(b) The Contractor (1) shall be responsible for safeguarding all classified or administratively controlled information in accordance with appropriate instructions furnished by the AID Office of Security, as referenced in paragraph (d) below and shall not supply, disclose, or otherwise permit access to classified information or administratively controlled information to any unauthorized person; (2) shall not make or permit to be made any reproductions of classified information or administratively controlled information except with the prior written authorization of the Contracting Officer or Mission Director; (3) shall submit to the Contracting Officer, at such times as the Contracting Officer may direct, an accounting of all reproductions of classified or administratively controlled information; and (4) shall not incorporate in any other project any matter which will disclose classified and/or administratively controlled information except with the prior written authorization of the Contracting Officer.

(c) The Contractor shall not permit any alien access to classified or administratively controlled information. The Contractor shall not permit any individual to have access to classified information or administratively controlled information without the prior written authorization of the Contracting Officer or Mission Director.

(d) The Contractor shall follow the procedures for classifying, marking, handling, transmitting, disseminating, storing, and destroying official material in accordance with the regulations in the Uniform Security Regulations (Foreign Affairs Manual, Chapter 5), a copy of which will be furnished by the Contracting Officer or Mission Director.

(e) The Contractor agrees to submit immediately to the Mission Director or Contracting Officer a complete detailed report, appropriately classified, of any information which the Contractor may have concerning

existing or threatened espionage, sabotage, or subversive activity.

(f) The Government agrees that when necessary it shall indicate by security classification or administratively controlled designation, the degree of importance to the national defense of information to be furnished by the Contractor to the Government or by the Government to the Contractor and the Government shall give written notice of such security classification or administratively controlled designation to the Contractor and of any subsequent changes thereof. The Contractor is authorized to rely on any letter or other written instrument signed by the Contracting Officer changing a security classification or administratively controlled designation of information.

(g) The Contractor agrees to certify after completion of his assignment under this Contract that he has surrendered or disposed of all classified and/or administratively controlled information in his custody in accordance with applicable security instructions.

15. CONTRACTOR-MISSION RELATIONSHIPS

(a) The Contractor acknowledges that this Contract is an important part of the U.S. Foreign Assistance Program and agrees that his duties will be carried out in such a manner as to be fully commensurate with the responsibilities which this entails.

(b) While in the cooperating country, the Contractor is expected to show respect for the conventions, customs, and institutions of the cooperating country and not interfere in its political affairs.

(c) If the Contractor's conduct is not in accordance with paragraph (b), the Contract may be terminated pursuant to the General Provision of this contract, entitled "Termination." The Contractor recognizes the right of the U.S. Ambassador to direct his/her immediate removal from any country when, in the discretion of the Ambassador, the interests of the United States so require.

(d) The Mission Director is the chief representative of AID in the cooperating country. In his capacity, he is responsible for the total AID Program in the cooperating country including certain administrative responsibilities set forth in this Contract and for advising AID regarding the performance of the work under the Contract and its effect on the U.S. Foreign Assistance Program. The Contractor will be responsible for performing his duties in accordance with the statement of duties called for by the Contract. However, he shall be under the general policy guidance of the Mission Director and shall keep the Mission Director or his designated representative currently informed of the progress of the work under the Contract.

16. TERMINATION

This Contract may be terminated by the Contracting Officer:

(a) For cause, by giving not less than 10 calendar days advance written notice and a statement of reasons to the Contractor in the event (1) he commits a breach or violation of any of his obligations herein contained, (2) a fraud was committed in obtaining this Contract, or (3) he is guilty (as determined by AID) of misconduct in the cooperating country. Upon such a termination, the Contractor's right to compensation shall cease when the period specified in such notice expires or the last day on which he performs services hereunder, whichever is earlier. No costs of any kind incurred by the Contractor after the date such notice is delivered to him shall be reimbursed hereunder except cost of return transportation (not including travel allowances), if approved by the Contracting Officer. If any costs relating to the period subsequent to such date have been prepared by AID, the Contractor shall promptly refund to AID any such prepayment as directed by the Contracting Officer.

(b) For the convenience of AID, by giving not less than 30 calendar days advance written notice to the Contractor. Upon such a termination, Contractor's right to compensation shall cease when the period specified in such notice expires except that the Contractor shall be entitled to return transportation costs and travel allowances and transportation of unaccompanied baggage costs at the rates specified in the Contract and subject to the limitations which apply to authorized travel status.

(c) For the convenience of AID, when the Contractor is unable to complete performance of his services under the Contract by reason of sickness or physical or emotional incapacity based upon a certification of such circumstances by a duly qualified doctor of medicine approved by the Mission. The Contract shall be deemed terminated upon delivery to the Contractor of a termination notice. Upon such a termination, the Contractor shall not be entitled to compensation except to the extent of any unused vacation or sick leave but shall be entitled to return transportation, travel allowances, and unaccompanied baggage costs at rates specified in the Contract and subject to the limitations which apply to authorized travel status.

17. DISPUTES (FPR TEMP. REG. 55) (MAY 1980)

(a) This Contract is subject to the Contract Disputes Act of 1978 (Pub. L. 95-563).

(b) Except as provided in the Act, all disputes arising under or relating to this con-

tract shall be resolved in accordance with this clause.

(c)(1) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract.

(2) A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently not acted upon in a reasonable time, or disputed either as to liability or amount, it may be converted to a claim pursuant to the Act.

(3) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for decision. A claim by the Government against the Contractor shall be subject to a decision by the Contracting Officer.

(d) For Contractor claims of more than $50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; the supporting data are accurate and complete to the best of the contractor's knowledge and belief, and the amount requested accurately reflects the Contractor adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. Where the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

(e) For Contractor claims of $50,000 or less, the Contracting Officer must render a decision within 60 days. For Contractor claims in excess of $50,000, the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suite as provided in the Act.

(g) The authority of the Contracting Officer under the Act does not extend to claims or disputes which by statute or regulation other agencies are expressly authorized to decide.

(h) Interest on the amount found due on a Contractor claim shall be paid from the date the claim is received by the Contracting Officer until the date of payment.

(i) Except as the parties may otherwise agree, pending final resolution of a claim by the Contractor arising under the Contract, the Contractor shall proceed diligently with the performance of the Contract in accordance with the Contracting Officer's decision.

18. Release of Information

All rights in data and reports shall become the property of the U.S. Government. All information gathered under this Contract by the Contractor and all reports and recommendations hereunder shall be treated as confidential by the Contractor and shall not, without the prior written approval of the Contracting Officer, be made available to any person, party, or government, other than AID, except as otherwise expressly provided in this Contract.

19. Officials Not To Benefit

No member of or delegate to the Congress or resident commissioner shall be admitted to any share or part of this Contract or to any benefit that may arise therefrom.

20. Covenant Against Contingent Fees

The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, AID shall have the right to annul this Contract without liability or in its discretion to deduct from the Contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

21. Notices

Any notice, given by any of the parties hereunder, shall be sufficient only if in writing and delivered in person or sent by telegraph, telegram, registered, or regular mail as follows:

To AID:

Administrator,
Agency for International Development,
Washington, D.C. 20523.
Attention: Contracting Office,
(Name of the cognizant Contracting Officer with a copy to the appropriate Mission Director).

To Contractor:

At his post of duty while in the cooperating country and at the Contractor's address shown on the Cover Page of this Contract, or to such other address as either of such parties shall designate by notice given as herein required. Notices hereunder shall be effective in accordance with this clause or on the effective date of the notice, whichever is later.

22. REPORTS

(a) The Contractor shall submit two copies of each written technical report prepared under the terms of this Contract (e.g., progress reports, final report, etc.) to the AID Reference Center, Agency for International Development, Washington, D.C. 20523. The title page of all reports forwarded to the AID Reference Center shall include the contract number, the project number and the project title which are set forth on the Cover Page of this Contract.

(b) When preparing reports, the Contractor shall refrain from using elaborate art work, multicolor printing and expensive paper/binding, unless it is specifically authorized in the Schedule of this Contract. Wherever possible, pages should be printed on both sides using single spaced type.

23. USE OF POUCH FACILITIES (DEC. 1980)

(a) Use of diplomatic pouch is controlled by the Department of State. The Department of State has authorized the use of pouch facilities for AID Contractors as a general policy, as detailed in items (1) through (6) below. However, the final decision regarding use of pouch facilities rests with the Embassy or AID Mission. In consideration of the use of pouch facilities as hereinafter stated, the Contractor agrees to indemnify and hold harmless the Department of State and AID for loss or damage occurring in pouch transmission.

(1) Contractors are authorized use of the pouch for transmission and receipt of up to a maximum of 2 pounds per shipment of correspondence and documents needed in the administration of assistance programs.

(2) U.S. citizen Contractors are authorized use of the pouch for personal mail up to a maximum of one pound per shipment (but see (a)(3) below). Non U.S. citizen Contractors are not permitted use of the pouch for personal mail except and to the extent that such use may be authorized by the Chief of Mission.

(3) Merchandise, parcels, magazines, or newspapers are not considered to be personal mail for purposes of this clause, and are not authorized to be sent or received by pouch.

(4) Official and personal mail pursuant to (a) (1) and (2) above, sent by pouch, should be addressed as follows:

Name of individual (followed by letter symbol "C"),
Name of post (USAID/),
Agency for International Development,
Washington, D.C. 20523.

(5) Mail sent via the diplomatic pouch may not be in violation of U.S. Postal laws and may not contain material ineligible for pouch transmission.

(6) AID contractors are *not* authorized use of military postal facilities (APO/FPO). This is an Adjutant General's decision based on existing laws and regulations governing military postal facilities and is being enforced worldwide. Posts having access to APO/FPO facilities and using such for diplomatic pouch dispatch may, however, accept official and personal mail for the pouch provided, of course, adequate postage is affixed when onward transmission (mail to other than AID/W) through U.S. postal channels is required.

(b) The Contractor shall be responsible for compliance with these guidelines and limitations on use of pouch facilities.

(c) Specific additional guidance on use of pouch facilities in accordance with this clause is available from the Post Communication Center at the Embassy or AID Mission.

ATTACHMENT C—ADDITIONAL GENERAL PROVISIONS—CONTRACT WITH A U.S. CITIZEN OR U.S. RESIDENT FOR PERSONAL SERVICES ABROAD

(To be used along with the General Provisions for a tour of duty of 1 year or more)

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1. Definitions (long tour).
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6. Travel and Transportation Expenses (long tour).
7. Orientation and Language Training (long tour).
8. Post of Assignment Privileges (dependents).
9. Termination (long tour).

1. DEFINITIONS (LONG TOUR)

(a) "Dependents" means:

(1) *Spouse.*

(2) *Children* (including step and adopted children) who are unmarried and under 21 years of age or, regardless of age, are incapable of self-support.

(3) *Parents* (including step and legally adoptive parents) of the employee or of the spouse, when such parents are at least 51 percent dependent on the Contractor for support.

(4) *Sisters and brothers* (including step or adoptive sisters or brothers) of the Contractor, or of the spouse, when such sisters and brothers are at least 51 percent dependent on the Contractor for support, unmarried and under 21 years of age, or regardless of age, are incapable of self-support.

(b) "Traveler" also means dependents of the Contractor who are in authorized travel status.

2. LAWS AND REGULATIONS APPLICABLE ABROAD (DEPENDENTS)

(a) *Conformity to Laws and Regulations of the Cooperating Country.*

While in the cooperating country, the Contractor agrees he will make every effort to assure that his authorized dependents shall abide by all applicable laws and regulations of the cooperating country and political subdivisions thereof.

(b) *Purchase, Sale, Import, or Export of Personal Property or Automobiles.*

To the extent permitted by the cooperating country, the purchase, sale, import, or export of personal property or automobiles by the Contractor's authorized dependents in the cooperating country shall also be subject to the same limitations and prohibitions which apply to U.S.-citizen direct-hire employee dependents.

3. PHYSICAL FITNESS (LONG TOUR)

(a) *Predeparture.*

The Contractor's authorized dependents shall also be required to be examined by a licensed doctor of medicine. The Contractor shall require the doctor to certify that, in the doctor's opinion, the Contractor's authorized dependents are physically qualified to reside in the cooperating country. A copy of the certificate shall be provided to the Contracting Officer prior to the dependent's departure for the cooperating country.

(b) *End of Tour.*

The Contractor and his authorized dependents are authorized physical examinations within 60 days after completion of the Contractor's tour of duty.

(c) *Reimbursement.*

The Contractor shall be reimbursed for the physical examinations mentioned in paragraphs (a) and (b) above as follows: (1) not to exceed $85 per examination for the Contractor's dependents of 12 years of age and over and (2) $25 per examination for Contractor's dependents under 12 years of age. The Contractor shall also be reimbursed for the cost of immunizations.

4. LEAVE AND HOLIDAYS (LONG TOUR)

(a) *Vacation Leave.*

With the approval of the Mission Director, and if the circumstances warrant, a Contractor may be granted advance vacation leave in excess of that earned but in no case shall a Contractor be granted advance vacation leave in excess of that which he will earn over the life of the Contract. The Contractor agrees to reimburse AID for leave used in excess of the amount earned during the Contractor's assignment under the Contract.

(b) *Military Leave.*

Military leave of not more than 15 calendar days in any calendar year may be granted to a Contractor who is a reservist of the Armed Forces, provided that such military leave has been approved in advance by the Contracting Officer or the Mission Director.

(c) *Home Leave.*

(1) Home leave is leave earned for service abroad for use only on the United States, in the Commonwealth of Puerto Rico, or in the possessions of the United States.

(2) A Contractor who is a U.S. citizen or U.S. resident and has served at least 2 years overseas, as defined in paragraph (c)(4) below, under this Contract, and has not taken more than 30 workdays leave (vacation, sick, or leave without pay) in the United States, may be granted home without pay) in the United States, may be granted home leave of not more than 15 calendar days for each such year of service overseas; provided, that the Contractor agrees to return overseas upon completion of home leave under an additional 2 year appointment, or for such shorter period of not less than 1 year of overseas service under the Contract as the Mission Director may approve in advance. Home leave must be taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States, and any days spent elsewhere will be charged to vacation leave or leave without pay.

(3) Notwithstanding the requirement in paragraph (c)(2) above, that the Contractor must have served 2 years overseas under this Contract to be eligible for home leave, Contractor may be granted advance home leave subject to *all* of the following conditions:

(i) Granting of advance home leave would in each case serve to advance the attainment of the objectives of this Contract;

(ii) The Contractor shall have served a minimum of 18 months in the cooperating country on his current tour of duty under this Contract; and

(iii) The Contractor shall have agreed to return to the cooperating country to serve out the remainder of his current tour of duty and an additional 2 year appointment under this Contract, or such other additional appointment of not less than 1 year of overseas service as the Mission Director may approve.

(4) The period of service overseas required under paragraph (c)(2), or paragraph (c)(3) above, shall include the actual days in orientation in the United States (less language training) and the actual days overseas beginning on the date of departure from the U.S. port of embarkation on international travel and continuing, inclusive of authorized delays en route, to the date of arrival at the U.S. port of debarkation from interna-

tional travel. Allowable vacation and sick leave taken while overseas, but not leave without pay, shall be included in the required period of service overseas. An amount equal to the number of days of vacation and sick leave taken in the United States, the Commonwealth of Puerto Rico, or the possessions of the United States will be added to the required period of service overseas.

(5) Salary during travel to and from the United States for home leave will be limited to the time required for travel by the most expeditious air route. The Contractor will be responsible for reimbursing AID for payments made during home leave if, in spite of the undertaking of the new appointment, the Contractor, except for reasons beyond his control as determined by the Contracting Officer, does not return overseas and complete the additional required service. Unused home leave is not reimbursable under this Contract.

(6) To the extent deemed necessary by the Contracting Officer, a Contractor in the United States on home leave may be authorized to spend not more than 5 days in work status for consultation on-campus or at AID/Washington before returning to post of duty. Consultation at locations other than AID/Washington or on campus, as well as any time in excess of 5 days spent for consultation, must be approved by the Mission Director or the Contracting Officer.

(7) Except as provided in the Schedule or approved by the Mission Director or the Contracting Officer, home leave is not authorized for third-country nationals.

5. Allowances (Long Tour)

The following allowances shall also be granted to the Contractor and his authorized dependents to the same extent, and on the same basis as, they are granted to AID employees and their dependents by the Standardized Regulations (Government Civilians, Foreign Areas), as from time to time amended:

	Applicable reference to standardized regulations
(a) Educational Allowance	Chapter 270.
(b) Educational Travel	Chapter 280.
(c) Separate Maintenance Allowances	Chapter 260.

The allowances provided in paragraphs (a) through (c) above shall be paid to the Contractor in dollars or in the currency of the cooperating country in accordance with the practice prevailing at the Mission.

6. Travel and Transportation Expenses (Long Tour)

(a) *General.*

Pursuant to paragraph (a) of Clause 10 of the General Provisions, when transportation is not provided by Government-issued TR for the items listed below, the Contractor shall procure his own transportation, the costs of which will be reimbursed in accordance with the following:

(1) *International Travel.*

(i) International travel costs and allowances and stopovers for authorized dependents shall be reimbursed on the same basis as for the Contractor under General Provision Clause No. 10(b)(2)(i) of this Contract except that travel allowances for such dependents shall be at the rate of $6 per day for persons 11 years of age or over and $3 per day for persons under 11 years of age payable for not more than the travel time required by scheduled economy class commercial air carrier using the most expeditious route and computed in accordance with the Federal Travel Regulations, as from time to time amended.

(ii) *1.* All international ocean transportation of things which is to be reimbursed in U.S. dollars as authorized under this Contract shall be by U.S.-flag vessels to the extent they are available. When U.S.-flag vessels are not available, or their use would result in a significant delay, the Contractor may request a release from this requirement from the SER/COM, Transportation Support Division, Agency for International Development, Washington, D.C. 20523, giving the basis for the request.

2. All international air transportation of dependents shall be in accordance with paragraph (b)(9) of Clause 10 of the General Provisions, entitled "Preference for U.S. Flag Air Carriers."

(b) *Limitation on Travel by Dependents.*

Travel costs and allowances will be allowed for authorized dependents of the Contractor and such costs shall be reimbursed for travel from place of abode in the United States to assigned station in the cooperating country and return, only if the dependent remains in the cooperating country for at least 9 months or one-half of the required tour of duty of the Contractor, whichever is greater, except as otherwise authorized hereunder for education, medical, or emergency visitation travel.

(c) *Delays En Route.*

Dependents may be granted reasonable delays en route, not circuitous in nature, while in travel status, caused by events beyond the control of such dependents.

(d) *Travel by Privately Owned Automobile (POV).*

Notwithstanding the provisions of paragraph (b)(7) of Clause 10 of the General

Provisions, if travel by POV is authorized in the Schedule or approved by the Contracting Officer, the Contractor shall be reimbursed for the cost of travel in his privately owned automobile at the rate per mile equal to the rate authorized a U.S. Government employee in equivalent circumstances, plus authorized per diem for the Contractor and for each of the authorized dependents traveling in the automobile if the automobile is being driven in connection with (1) authorized orientation, (2) authorized duties under this Contract, or (3) en route to or from the cooperating country as authorized in the Schedule; provided that the total cost of the mileage and the per diem paid to all authorized travelers shall not exceed the total constructive cost of fare and normal per diem by all authorized travelers by (i) surface common carrier or (ii) less-than-first-class air, whichever is the lesser.

(e) *Emergency and Irregular Travel and Transportation.*

Notwithstanding the provisions of paragraph (b)(8) of Clause 10 of the General Provisions, actual transportation costs and travel allowances while en route, as provided in this section, will also be reimbursed under the following conditions:

(1) Subject to the prior written approval of the Mission Director, the costs of going from post of duty in the cooperating country to the United States or other approved location for the Contractor and authorized dependents, when because of reasons or conditions beyond his control, the Contractor has not completed his required service in the cooperating country or the dependent must leave the cooperating country. The Mission Director may also authorize the return to the cooperating country of such Contractor and/or his authorized dependents.

(2) It is agreed that paragraph (e)(1) above, includes but is not necessarily limited to the following:

(i) Need for medical care beyond that available within the area to which Contractor is assigned.

(ii) Serious effect on physical or mental health if residence is continued at assigned post of duty.

(iii) Serious illness, injury, or death of a member of a Contractor's immediate family or the immediate family of a dependent. Travel may be authorized in accordance with emergency visitation travel granted to U.S.-citizen direct-hire employees and their dependents under Chapter 690 of the Standardized Regulations (Government Civilians, Foreign Areas).

(iv) Emergency evacuation, when ordered by the principal U.S. Diplomatic Officer in the cooperating country. Transportation and travel allowances at safe haven and the transportation of household effects and automobile or storage thereof when authorized by the Mission Director shall be payable in accordance with established Government regulations.

(v) Preparation and return of the remains of a deceased Contractor or his dependents.

(f) *Transportation of Motor Vehicles, Personal Effects, and Household Goods.*

(1) *General.*

Transportation, including packing and crating costs, will be paid for shipment from Contractor's residence in the United States or other location (provided that the cost of transportation does not exceed the cost from the Contractor's residence) to post of duty in the cooperating country and return to the Contractor's residence in the United States or other location (provided that the cost of transportation does not exceed the cost to the Contractor's residence), (i) of one privately owned motor vehicle for the Contractor subject to the restrictions contained in paragraph (h) below, (ii) of personal effects of the Contractor, and (iii) of household goods of Contractor not to exceed the following limitations.

	Basic household furniture not supplied (pounds net weight)	Basic household furniture supplied (pounds net weight)
Contractor with dependents in cooperating country	7500	2500
Contractor without dependents in cooperating country	4500	1500

NOTE.—For the purpose of this Clause, "net weight" and "gross weight" are defined and determined in accordance with the provisions of Section 162.1 of the Uniform State/AID/USICA Foreign Service Travel Regulations.

The cost of transporting motor vehicles and household goods shall not exceed the cost of packing, crating, and transportation by surface common carrier. In the event that the carrier does not require boxing or crating of motor vehicles for shipment to the cooperating country, the cost of boxing or crating is not reimbursable. The transportation of a privately owned motor vehicle for a Contractor may be authorized as a replacement of of the last such motor vehicle shipped under this Contract for such Contractor when the Mission Director determines, in advance, and so notifies the Contractor in writing, that the replacement is necessary for reasons not due to the negligence or malfeasance of the Contractor. The determination shall be made under the same rules and regulations that apply to authorized Mission U.S.-citizen direct-hire employees.

(2) *Unaccompanied Baggage.*

The Contractor will be reimbursed for costs of shipment of unaccompanied baggage (in addition to the weight allowance

above for household effects) not to exceed the following:

	Gross weight
Employee	250 lbs.
First dependent traveling	200 lbs.
Second dependent traveling	150 lbs.
Each additional dependent traveling	100 lbs.

This unaccompanied baggage may be shipped as air freight by the most direct route between authorized points of origin and destination regardless of the modes of travel used.

Unaccompanied baggage is considered to be those personal belongings needed by the traveler immediately upon arrival at destination.

(3) *Reduced Rates on U.S.-Flag Carriers.*

Reduced rates on U.S.-flag carriers are in effect for shipments of household goods and personal effects of AID Contractors between certain locations. These reduced rates are available provided the shipper furnishes to the carrier at the time of the issuance of the Bill of Lading documentary evidence that the shipment is for the account of AID. The Contracting Officer will, on request, furnish to the Contractor current information concerning the availability of a reduced rate with respect to any proposed shipment. The Contractor will not be reimbursed for shipments of household goods or personal effects in amounts in excess of the reduced rates which are available in accordance with the foregoing.

(g) *Storage of Household Effects.*

The cost of storage charges (including packing, crating, and drayage costs) in the United States of household goods of Contractor will be permitted, in lieu of transportation of all or any part of such goods to the cooperating country under paragraph (f) above, provided that (1) the total amount of household goods shipped to the cooperating country and stored in the United States shall not exceed 4,500 pounds net for each Contractor without dependents in the cooperating country and 7,500 pounds net for each Contractor with dependents in the cooperating country, and (2) at least 200 pounds net of household effects will be stored; quantities of less than 200 pounds net stored will not be reimbursed.

(h) *Transportation of Foreign-Made Motor Vehicles.*

Reimbursement of the costs of transporting a foreign (non-U.S.) made motor vehicle will be made in accordance with the provisions of the Uniform State/AID/USICA Foreign Service Travel Regulations, as from time to time amended, on the same basis as a U.S. Government employee.

(i) *Home Leave Travel.*

The Contractor shall be reimbursed for the cost of travel performed by Contractor and dependents for purposes of home leave, provided that such reimbursement does not exceed that authorized by the Uniform State/AID/USICA Foreign Service Travel Regulations.

(j) *Rest and Recuperation Travel.*

If approved in writing by the Mission Director, the Contractor and his dependents shall be allowed rest and recuperation travel on the same basis as authorized U.S.-citizen direct-hire Mission employees and their dependents.

7. Orientation and Language Training (Long Tour)

(a) Except as set forth in paragraph (b)(4) below, the Contractor shall receive a maximum of 2 weeks AID orientation before travel overseas. The dates of orientation shall be selected by the Contractor and approved by the Contracting Officer from the orientation schedule provided by AID.

(b) As either set forth in the Contract Schedule, or provided in writing by the Contracting Officer, the following may be authorized taking into consideration specific job requirements, Contractor's prior overseas experience, or unusual circumstances, in connection with orientation of individual Contractors:

(1) Modified orientation,

(2) Language training,

(3) Orientation for Contractor's dependents at Contract expense,

(4) Waiver of orientation for individual Contractor.

(c) Transportation costs and travel allowances not to exceed one round trip from the Contractor's residence to place of orientation and return will be reimbursed, pursuant to Clause 10 of the General Provisions, entitled "Travel and Transportation Expenses," if the orientation is more than 50 miles from the Contractor's residence. Allowance salary costs during the period of orientation are also reimbursable.

8. Post of Assignment Privileges (Dependents)

(a) Health room services are generally available for Contractor's authorized dependents at the post of duty. These services do not include hospitalization, or predeparture or end of tour medical examinations. The services do include such medications as may be available, immunizations and preventive health measures, diagnostic examinations and advice, emergency treatment, and home visits as medically indicated.

(b) Privileges such as the use of APO, PX's, commissaries and officer's clubs are

established at posts abroad pursuant to agreements between the U.S. and host governments. These facilities are intended for and usually are limited to members of the official U.S. establishment including the Embassy, AID Mission, USICA, and the Military. Normally, the agreements do not permit these facilities to be made available to non-official Americans.

9. TERMINATION (LONG TOUR)

If this Contract is terminated for the convenience of the Government pursuant to Clause 16 of the General Provisions, the Contractor shall also be entitled to return transportation costs and travel allowances for authorized dependents, transportation of motor vehicle, personal effects, and household goods, if any or all of the above are authorized in this Contract, subject to the limitations which apply to such costs.

[46 FR 31569, June 16, 1981, as amended at 47 FR 13146, Mar. 29, 1982; 47 FR 25966, June 16, 1982]

APPENDIX G—CONTRACT CLOSEOUT PROCEDURES

1. Purpose

This Appendix G establishes procedures for the orderly and expeditious closeout of completed AID/W and Mission direct contracts.

2. Closeout Procedures

(a) For the purpose of this Appendix, the "closeout phase" is defined as the period of time extending from the date the work has been completed by the contractor (including submission of all reports required under the contract) until all remaining administrative actions have been satisfactorily accomplished and the contract file is retired. The closeout procedures are administered by the Support Services Branch, Office of Contract Management (CM/SD/SUP).

(b) AID organizational elements accomplish their respective responsibilities during the closeout phase as follows:

(1) *Fixed-Price Type Contracts.* Within 4 months after the contractor has completed the work.

(2) *Cost-Reimbursement Type Contracts.* Within 21 months after the contractor has completed the work.

(c) Contract records are not officially retired by the contracting office until the closeout phase is completed.

3. Responsibility

(a) *Contracting Office.* The contracting officer is responsible for:

(1) Identifying outstanding closeout actions.

(2) Contacting other offices within AID having responsibilities during the closeout phase for status information.

(3) Assuring that all closeout actions have been accomplished as evidenced by the information provided by responsible offices on the checklist form.

(4) Initiation of follow-up measures, as necessary, on administrative actions which have not been completed within a reasonable time.

(5) Submitting any contract file to the Office of the General Counsel for review when he feels that: (i) Litigation may be involved, or (ii) there is a legal problem which GC should comment on before the contract is closed out.

(b) *Other AID Offices.* Other AID offices (e.g., the Technical Office, Inspector General, AID/W or Mission Security, AID/W Paying Office or Mission Controller, and the Mission) are responsible for:

(1) Accomplishing administrative actions on a work-completed contract as expeditiously as possible.

(2) Providing completed checklist forms or other status information as requested by the contracting officer in accordance with the procedures in this appendix.

4. Procedures

(a) As soon as feasible, but not more than 90 days after completion of the work under a contract (including receipt of all reports required thereunder), the contracting officer, or his designated representative, reviews the contract records to identify the outstanding closeout actions which must be accomplished prior to retiring the contract.

(b) The contracting officer or his designated representative (CM/SD/SUP for AID/W) prepares and sends two copies of form AID 1420-15*, Contract Closeout Checklist, to each of the indicated AID action offices as follows:

Part I—AID/W Technical Office (form AID 1420-15A).

Part II—AID Security or Mission Security Office (form AID 1420-15B).

Part III—AID/W IG Audit (form AID 1420-15C).

Part IV—AID/W Paying Office or Mission Controller (form AID 1420—15D).

Part V—Mission (form AID 1420-15E).

(c) The above checklists are sent concurrently to the action offices indicated. Each action office returns one copy of the completed part of the checklist to the contracting officer by the date indicated on the form. Additional remarks or comments by the action office may be attached to their reply. In closing out a mission contract, it may be necessary to obtain certain information from AID/W offices before completing the checklist. If an office indicates on the checklist that one or more items are still pending, they forward the second and final signed copy of the checklist when all of their outstanding actions have been completed.

(d) The contracting officer, or his designated representative, follows up periodically on outstanding administrative actions that have not been accomplished within a reasonable period of time.

(e) The contracting officer shall certify to the Security Office when the contractor has given notification that all classified information in the contractor's possession has been properly disposed of or retained (see Part VI, item 8 of form AID 1420-15F).

(f) When the contracting officer has received the completed, certified checklists from the other action offices, he completes Part VI, the Contracting Office Checklist (form AID 1420-15F), assembles all checklist parts in order, signs the certification in paragraph B of Part VI, and places the document in the contract file. The signed checklist and support data then constitute the necessary authority to officially retire the contract file.

5. Availability of Contract Closeout Checklist

The six part contract closeout checklist form, AID form 1420-15, is stocked by the AID Distribution Branch (MO/PAV) and by the Support Division, Office of Contract Management. Mission contracting offices should order their supply through the AID Distribution Branch (MO/PAV); AID/W contracting offices, through the Support Division, Office of Contract Management.

[46 FR 31589, June 16, 1981]

Appendix H—Use of Collaborative Assistance Method for AID Direct Contracts for Technical Assistance

1. Introduction

(a) AID direct contracts for technical assistance are now classified in one of three categories depending on the source selected to perform the services. They are:

(1) Architect/engineer services provided with a technical assistance project;

(2) Services to be performed by an educational/nonprofit institution; and

(3) Services to be performed by commercial contractors, or others, as a result of competitive negotiation.

(b) Procurement policies and procedures for architect/engineer services are contained in the AID Procurement Regulations (AIDPR 7-4.10). Services to be performed by commercial contractors, or others, as a result of competitive negotiation will now be procured under policies and procedures contained in Subpart 7-4.56, General Selection Procedures, in the AID Procurement Regulations.

(c) For the procurement of services to be performed by educational institutions, international research centers, or cooperative development organizations, there are two Subparts to the AID Procurement Regulations. The first of these, Subpart 7-4.57, Educational Institution and International Research Center Selection Procedure will be used whenever it has been determined that required services or relationships necessary for the successful performance of the project are available only from an educational institution or international research center (except contracts negotiated under 7-3.211 and Subpart 7-4.58, Collaborative Assistance).

(d) The second of these, Subpart 7-4.58, Collaborative Assistance, introduces an additional approach for obtaining services from educational institutions, international research centers, or cooperative development organizations, and is the major concern of this appendix.

2. Purpose

This appendix describes an alternative contractual relationship known as the collaborative assistance approach for the following purposes:

(a) Increasing the joint implementation authority and responsibility of the contractor and the LDC;

(b) Encouraging more effective collaboration between all participating parties (AID, host country, and contractor) at important stages, including the design stage, of a technical assistance project.

3. Policy

The collaborative assistance approach represents an alternative method for long-term technical assistance which involves professional collaboration with educational institution, international research center, or cooperative development organization contractors and LDC counterparts for a problem-solving type activity to develop new institutional forms and capabilities, to devise operating systems and policies, and to conduct joint research and development—including training. In such an activity, the difficulty in defining, in advance, precise and objectively verifiable contractor inputs and long-term project content as a basis for payment usually requires a flexible approach to project design, contracting, and project implementation. Such flexibility is also essential to the collaborative style which is responsive to LDC desires in problem areas of great complexity and varying uncertainty. Other types of technical assistance, which are usually shorter in term are amenable to more precise definition in advance, or involve closely defined and relatively standardized services, or are otherwise more analogous to commodity resource transfers, may be suitable for other contracting methods, e.g., certain forms of institution building, on-the-job training, resource surveys, etc. The collaborative assistance method is an approved method for providing technical assistance when used in accordance with the circumstances outlined above, and with the guidelines set forth in paragraph 4, below.

4. Implementation Procedures

(a) *Introduction.* This paragraph 4, provides background information, guidelines and procedures to effect the implementation of the policy set forth in paragraph 3 of this section.

(b) *Conditions and Practices.* In order for this policy to work effectively even when the proposed activity fits the criteria described under Policy, there must also be:

(1) Acceptance of the notion that the host country, in consultation with the contractor, is in the best position to make tactical, day-to-day decisions on project inputs within agreed-upon limitations and output expectations;

(2) Sufficient trust and respect between the Agency and the contractor to allow this flexible implementation authority;

(3) A direct-hire project monitor with appropriate background to be knowledgeable of progress and to assist in an advisory and facilitative capacity, both during and between periodic reviews. In addition, the following important conditions must be met:

(i) Adequate preproject communication between, and identification of assistance required by, the host government and USAID;

(ii) Full joint planning and improved project design ("Joint" as used herein refers to the primary parties, i.e., the collaborating institutions, as well as the host government and USAID. In some instances, it can also include other donors.);

(iii) Careful contractor selection, i.e., matching of the contractor's technical and managerial capabilities to the anticipated requirements of the overseas activity;

(iv) Establishment of relationships between host country, AID and contractor staff to include host country leadership, flexible implementation authority, and effective management by the contractor;

(v) Improved joint project evaluation, feedback, and replanning; and

(vi) Simplified administrative procedures and greater reliance on in-country logistical support.

(c) *Project Stages and Contractor Involvement.* In the long-term technical assistance projects as described above, there are four discrete but sometimes overlapping decision stages which take place—with the principal contractor usually involved in the last three.

(1) *Problem Analysis and Project Identification.* After the host government has indicated a desire for U.S. collaboration on a particular problem and the AID field mission has determined that the proposed activity is consistent with its program goals and priorities, considerable effort is usually necessary to refine further the project purpose and type of assistance required and provide a basis for contractor selection. This is a crucial step and is focused on results sought—on what the prospective contractor is expected to produce in relation to resources to be used and to project purpose. It should result in a clear understanding of what the LDC wants, and an overall plan which includes agreement on specific objectives or outputs, acceptable types of activities and inputs and an initial budget—resulting in project documentation. At this step, AID makes decisions it cannot delegate on what it will support and at what cost. If needed to supplement its direct-hire expertise, AID can use outside consultants for analysis and advice but retains the ultimate decision for itself in collaboration with, but independent of, the requesting host government. (Normally, the proposed contractor for project definition and subsequent implementation should not have been involved in the problem analysis and project identification stage as a consultant to either the host country government, host institution, or USAID. If a potential contractor has been so involved, particular care must be taken to prevent actual or apparent organizational conflicts of interest in the procurement that follows. This could require, at a minimum, a careful assessment and complete documentation of reasons for selection.)

Normally, there will need to be some mutual interaction between the overall planning stage outlined here and the detailed planning and design work which follows in the next phase. There will usually be some overlap, with preliminary decisions in this stage providing a basis for selection of implementing agents for stage (2) which in turn proceeds through some preliminary planning to guide completion of stage (1) as a basis for long-term contracting.

(2) *Project Definition.* At this stage, having selected the implementing agent, the U.S. and LDC organizations which will be collaborating in carrying out the project are encouraged to work out, to their mutual satisfaction, the particulars of what to do and how to do it (i.e., detailed project design) within the context of LDC leadership and responsibility and the general agreements and budget reached in stage (1). The emphasis here is on the technical approach to be utilized and the scheduling and management of project inputs. This may involve a short-term reconnaissance and/or an extensive period of detailed joint planning and feeling out of what is feasible during a preliminary operating phase of the project, possibly lasting as much as a year or more. This stage recognizes the importance, for the problem-solving or ground-breaking types of technical assistance, of involving the U.S. and LDC implementing organizations together as soon as the detailed design work begins. AID's role here is to facilitate, not direct, the joint planning, assure consistency with prior agreements or concur in changes, affirm that the implementing parties have agreed on a reasonable project design, and prepare or cause to be prepared the documentation required for stage (3), including any amendments that might be required to the project documentation. If and when a decision is made by the host government and AID to proceed into the operating phase with the same contractor, the U.S. intermediary should be treated as a cooperating partner in the negotiation of the subsequent long-term operating agreement(s) with the host government, host institution and AID.

(3) *Implementation.* The results of the approach outlined in the stage above should include, in addition to a better understanding and more meaningful commitment by all parties, the following specific products:

(i) A jointly developed life-of-project design which reflects the commitment of all parties and includes clear statements of purpose, principal outputs, eligible types of activity and expenditure limits, critical assumptions, and major progress indicators;

(ii) A workplan and input schedule for the first two years or at least as long as the expenditure period for the next obligation of project funds;

(iii) Provisions for any administrative support, special services or other inputs by the host country, contractor, and/or AID; and

(iv) A plan for periodic joint evaluation and review or progress and subsequent workplans, normally annually, with the participation of all parties.

Appropriate elements of these agreements and understandings are now embodied in a contract for project implementation, as described in paragraph ((d)(3)(i)) of the section on Contracting Implications. This contract allows the U.S. intermediary to apply its judgment, reflecting close collaboration with its LDC colleagues, in adjusting the flow of AID-financed inputs and in making other operational decisions with a minimum of requirements for prior AID approvals or contract amendments as long as the contractor stays within the bounds of the approved overall plan and budget. In this phase, AID will give technical assistance contractors the authority and responsibility for using their specialized expertise to the fullest extent in the scheduling and managing of project inputs.

(4) *Monitoring, Joint Evaluation and Replanning.* With increased flexibility and responsibility for implementation placed with the technical assistance contractor, the host government, and/or institutional collaborator, improved and timely progress reporting and periodic, joint, and structured reviews of results and evolving plans are imperative as a basis for monitoring and evaluating contractor performance, revalidating or adjusting project design, and for determining future funding levels and commitments.

Both the contractor's annual report and the joint review should be structured within the framework of purpose, outputs, performance indicators, etc., originally established in the project identification phase—as modified by detailed project designed—and reflected in the Project Agreement and other pertinent documentation. The field review will normally serve as the occasion for discussing changes in or additions to previously agreed-to workplans as well as proposing changes in purpose, types of activities authorized and budgets which require contract amendment. Obviously, the appropriate host government, host institution, and senior contractor officials should be thoroughly involved in the process, which will have to be adapted to the conditions within specific projects and countries. An important USAID responsibility is to assure that there is appropriate host country participation in developing and improving project plans prior to new obligations of funds. The special requirements and responsibilities of the various parties shall also be reflected in The Project Agreement and contract terms and in guidelines on the content of annual reports, evaluation procedures, etc.

Standard checking on services actually delivered as a basis for reimbursement will be continued including appropriate audit of expenditures.

(d) *Contracting Implications.* The principal elements of change in present contracting practices, as detailed below, are earlier selection and involvement of the prime contractor, contracting by major stages of project design and operations, minimizing the need for precontract negotiations and contract amendments and AID approvals, and providing technical assistance contractors with the authority and responsibility needed to manage implementation within the approved program bounds.

(1) *Selection.* The early involvement of contractor in the definition stage of a long-term technical assistance project, after AID decides what it wants to undertake in stage (1), does not alter the Agency's responsibility to select its contractors carefully and in

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full compliance with appropriate contracting regulations and selection procedures. What is required here is that contractor selection be carried out at an earlier stage than has sometimes been the agency practice in the past or with other types of contracts and in anticipation that the contractor, assuming adequate performance, will participate in all subsequent phases until final completion.

(2) *Contracting Stages.* In contracting, the initial design stage should be separated from the longer term implementation stage without any AID commitment to undertake the second until it has exercised its independent judgment based on the product of the first plus any outside expert appraisal it and the host country want to use.

The long-term implementation stage itself may be further subdivided into contract periods which permit time between predetermined events for analysis, determination of new project requirements, and evaluation of performance prior to initiating the next phase by contract amendment/extension. If, for any reason, such an examination does not appear to warrant project continuation, then termination of the project and/or contract would be the next step.

(3) *Flexible Implementation Authority.* While good project design will eliminate or diminish many operational problems, the very nature of long-term technical assistance requires flexible implementation within agreed purposes, ultimate outputs, types of activity and available financing. With these key variables for AID management control established, contracts should be written so as to minimize the need for amendments and AID approval of changes in input particulars. This can be facilitated, both for the USAID, host country, institution, and the contractor, by:

(i) *Retention of Operational Plan in Contract and Removal of Workplan.* The contract narrative will contain the life-of-the-project Operational Plan, consistent with the project design as developed in stage (2) and reflected in the project documentation (and subsequent amendments thereto). The Operational Plan includes a statement of the purpose to be achieved, the outputs to be produced by the contractor and the types of activities to be undertaken, the more significant indicators of progress, a general description of the type of inputs that are authorized and intended to be provided during the life of the project, and the overall budget.

In order to allow adjustments at the implementation level without going through the contract amendment process, the detailed but short-term workplan containing specific descriptions and scheduling of all inputs such as numbers and types of staff, participants, commodities, etc., and specific activities, will not be a part of the contract. It is a working document to be modified in the field when the situation demands. The latest version will be available as a supporting document to justify proposed new obligation levels. Normally, the workplan and derived budget will cover a rolling two year period, i.e., each year another yearly increment is added after review and approval.

(ii) *Budget Flexibility.* To support this implementation flexibility, contract budget or fiscal controls will be shifted from fixed line items for each input category to program categories, permitting the technical assistance contractor to adjust amounts and timing to achieve previously approved project purpose and outputs—as long as he/she remains within the total contract amount and approved types of activity. This same type of flexibility should apply to any local currency supplied for project operations and/or contractor staff support. While an essential corollary to eliminating the workplan from the contract, this is not a unique procedure under cost reimbursement type contracts when the contractor has demonstrated adequate management capability.

(iii) *Negotiation of Advance Understandings.* To permit university and International Research Center contractors to manage their activities in accordance with their own policies and procedures and thereby sharpen their management responsibility while achieving substantial savings in time and reduced documentation, AID may negotiate advance understandings with its technical assistance contrac-

tors on dollars cost and administrative procedures that would be included by reference in its subsequent contracts. Upon receipt of a request from the contractor that their policies be reviewed and approved for usage in their contract in lieu of the standard terms and conditions, CM/SOD/OSC, AID/W, will initiate negotiations of such policies in an expeditious manner. The approved policies will be used in all relevant relations involving the Agency and respective contractors in lieu of traditional contract standard provisions, whenever this may be appropriate. This does not apply to local currency costs and host government procedures which must be negotiated in each case.

The purpose of the practices listed above is not only to give a qualified contractor the authority to adjust the composition and timing of inputs but to assign him/her to clear responsibility of managing such resources, as the evolving circumstances require, to achieve the agreed-upon outputs on a cost efficient basis. It should also reduce the delay and paperwork involved in frequent but minor contract amendments, and approvals. For the Agency as a whole, both in the Mission and in AID/W, these have involved a large workload and cost.

(e) *Role of AID.* Nothing in this appendix is intended to delegate, diminish or otherwise modify AID's final responsibility for the prudent management of public funds and its own programs. Rather, in withdrawing from the day-to-day involvement in and responsibility for the management of adjustment of the flow of inputs during the implementation, the best use of limited Agency staff and time can be devoted to protecting the public interest in gaining maximum results from the funds appropriated for technical assistance by:

(1) Seeking optimum identification in terms of LDC priorities and U.S. capabilities;

(2) Mobilizing and selecting the best U.S. professional talent to design and carry out the project;

(3) Monitoring what is happening to assure adequacy of processes, get a feel of results, assure actual delivery of inputs being financed;

(4) Assuring that the attention of AID's implementation agents and LDC colleagues stay well focused on project purpose and results to be achieved (outputs) and the relation to these of what is being done and actual results;

(5) Providing intermediaries adequate authority and responsibility to adjust inputs promptly and sensitively to the evolving project situations.

Attention to these considerations, and to achievements of the preimplementation conditions prescribed above, should greatly increase the chances for successful project completion and impact on a cost effective basis, which is the final measurement of prudent management.

Attachment 1 to Appendix H—Guidelines for Preparation of, and Response to, Requests for Expression of Interest (REI) Under the Collaborative Assistance Method

A. Length and Level of Detail

An Expression of Interest should include more than just a short letter expressing interest, but should not be in the detail of a technical proposal (RFTP). The Expression of Interest Document is not the only source of information that can or should be used for selection, but at least a minimum level of information should be contained in each document. A ten page paper that responds to the selection criteria included in every REI should be sufficient for evaluation purposes. The selection criteria should specify the technical inputs required for successful execution of the project and normally require a response in three general areas:

1. A description of the institution's capability to address the problem described in the REI.

2. Any related experience, whether in the country or region or in the problem area.

3. A demonstrable commitment of the institution to support the project.

The responses should address the capability, experience, and commitment to the *particular project.*

B. Specific Personnel Information

The response should specify within the areas set out in the selection criteria the following planning and personnel factors.

1. The design team plan and the scope of work for each member.

2. A list of candidates for the design team and their credentials.

3. A list of possible candidates for long-term assignment to the project. (Since there has been no project design, the specific technical assistance slots and technical responsibilities are vague. But it is expected that at least half of the personnel needs can be estimated early in the project. The institution should make its best guess for the team and present to the Agency the persons or types of persons with whom they are likely to contract.)

C. Multiple Institution Submissions

Joint effort on the part of several institutions is encouraged when appropriate. A single institution may submit an Expression of Interest for part of the project without knowledge of other collaborators or it may submit information in response to A and B of this attachment as part of a suggested collection of institutions. In either case, a proposed plan for cooperation is necessary. However, such joint efforts must specify the division of responsibilities for the planning and personnel factors indicated in B of this attachment. Often AID will identify the need for cooperation and suggest such an effort in the REI. Even if AID does not suggest collaboration, joint efforts with a description of the cooperation would be an appropriate way to respond to an REI.

[46 FR 31589, June 16, 1981]

APPENDIX I—APPROVAL AND REPORTING PROCEDURES FOR CONTRACTOR SALARIES

1. Purpose

This appendix does the following:

(a) Provides guidelines for the use of prudent judgement when considering salaries, especially salaries exceeding the FS-1 maximum salary limitation (5 U.S.C. 5308 and Pub. L. 95-66);

(b) Establishes procedures for justification of salary approvals;

(c) Prescribes procedures for control numbers and submission of copies of salary approvals to SER/CM/SD/SUP;

(d) Establishes a semiannual report of salary approvals for the Deputy Administrator.

2. Procedures

(a) *Salary Approvals.*—In accordance with Handbook 14, AID Procurement Regulations 7-15.205-6(b)(2), contracting officer approvals of salaries exceeding the FS-1 rate are to be based upon a memorandum from the technical office approved by the Assistant Administrator or Mission Director having program responsibility for the contract. The reasonableness of proposed salaries exceeding the FS-1 level must be evaluated by the appropriate technical office in terms of the technical competence required, scope of supervisory responsibilities involved, and the relationship of the proposed salary level to the individual's customary salary level for similar work. Even though approval of salary levels above the FS-1 rate are justified primarily by the Assistant Administrator or Mission Director having program responsibility, it is the contracting officer's responsibility to scrutinize increases as a matter of business acumen whenever AID negotiations deal with any salaries payable under contracts. Increases in the FS-1 statutory salary limitation are not, and shall not be by themselves, a basis for upward salary revisions of contractor employees. Proposals for such revisions should be considered normally when contracts are renewed, and must be carefully reviewed and negotiated to ensure that increases are not automatically granted without corresponding increases in the quality or quantity of services rendered. Salaries below the FS-1 maximum level should also be fully justified, even though formal approval procedures may not be involved. Personnel compensation negotiated and payable under AID contracts should be at the minimum levels necessary to at-

tract needed technical services in a competitive market. Rates should be determined by the "market place" where the types of services are obtained. Using such criteria, very few salaries can be expected to approach or exceed the FS-1 level.

Actual discussions with contractors concerning salaries should be held only by persons authorized to negotiate and execute contracts. (See AIDPR Appendix A.)

(b) *Justification of Approvals.*— There will be cases where the services required are so unique and highly specialized that few persons are available to perform them. In such instances, if justifications for exceptional salaries are needed, particularly where the salary would exceed the FS-1 level, the project officer will be consulted. If no alternative can be found, the project officer will prepare a salary justification to support the negotiator's action. It is the negotiator's responsibility to see to it that such cases are fully justified and that a complete record of the rationale is included in his memorandum for the contract file.

3. Approval Control Numbering and Submission to SER/CM

Copies of all approvals of salaries that exceed the FS-1 level are required to be sent to SER/CM/SD/SUP. To assist SER/CM in determining that they are receiving all copies from each approving office, approving officials will have a consecutive control number starting each fiscal year assigned to each approval by their office, the record of which will be maintained separately from other approval documents.

4. Semiannual Report to the Deputy Administrator

Commencing with March 31, 1978, a semiannual report listing all salary approvals that exceed the FS-1 maximum level will be sent to the Deputy Administrator of AID by the Office of Contract Management.

[46 FR 31592, June 16, 1981, as amended at 47 FR 13146, Mar. 29, 1982]

Appendix J—Response to Audit Recommendations

1. Purpose

This Appendix establishes consolidated procedures for responding to post-award audit reports. The procedures in this Appendix are not applicable to pre-contract audit surveys.[1]

2. Applicability

The procedures set forth in this Appendix apply to all audit recommendations concerning costs questioned under AID-direct contracts whether the recommendation is assigned to SER/CM, or to a Mission or Area Contracting Officer.

3. The Role of the Inspector General

(a) *Legislative and Procedural Requirements.* Public Law 96-304, July 8, 1980 (Section 305) requires that audits involving questioned costs be resolved within six months. Further, OMB Circular A-73, Audit of Federal Operations and Programs, requires that each agency establish policies and procedures for prompt and proper resolution of audit recommendations, and establish standards for such policies and procedures. The Administrator has approved procedures for audit follow-up and resolution, as recommended by the Inspector General (IG).

(b) *IG Responsibilities.* (1) The IG and the Regional Inspectors General (RIG) are responsible for tracking and following up on audit recommendations to insure prompt and proper resolutions, and for reporting on monetary recoveries resulting from audit reports. Following receipt of the Contracting Officer's disposition of the substance of an audit recommenda-

[1] Contracting Officers often request audit advice and assistance in evaluating Contractor's proposals prior to award. FPR 1-3.811(b) requires the Contracting Officer to provide a copy of the memorandum of negotiation to the auditor (the cognizant RIG) when a pre-award survey has been performed, to inform the auditor of the disposition and usefulness of the pre-award survey. Provision of a copy of the memorandum of negotiation to the cognizant RIG, pursuant to FPR 1-3.811(b), constitutes response to a pre-award audit survey.

tion, the IG and RIG are responsible for determining whether or not to officially close the recommendations.

(2) If the cognizant RIG has not received satisfactory evidence of resolution of an audit recommendation within four months of issuance, the RIG will request a status report from the office assigned action responsibility (see also paragraph 5b(3) of this section). If no evidence of satisfactory resolution is received by six months, the IG follows up directly with the cognizant Assistant Administrator. The IG may request the Deputy Administrator to take action on any recommendation open for more than six months.

(3) If the cognizant RIG does not agree to an action office's disposition of an audit recommendation, the RIG will first attempt to resolve the issue with the action office. If this is unsuccessful, the issue will be referred to the IG, who will attempt resolution with the cognizant office head or Assistant Administrator. If the issue cannot be resolved at this level, it can then be referred by IG to the Deputy Administrator for decision. (See also paragraph 4.b., concerning the role of the Contracting Officer.)

(4) If the cognizant RIG questions a Contracting Officer's decision not to seek recovery of audit questioned cost, the RIG may submit the issue to the cognizant Regional Legal Advisor, or to the General Counsel's Office. (See also paragraph 4.b., concerning the role of the Contracting Officer.)

4. The Role of the Contracting Officer

(a) Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 601-613), as implemented in FPR 1-1.318 and AIDPR 7-1.318, and as provided in FPR 1-1.402 and AIDPR 7-1.452-1, Contracting Officers have the authority to negotiate and enter into settlements with contractors of costs questioned under audit reports. With this authority goes the responsibility for insuring that such settlements are properly justified and documented, and promptly executed.

(b) A negotiated settlement of questioned costs, executed by the contractor and the Contracting Officer; or a Contracting Officer's final decision pursuant to the Disputes clause (in the event questioned costs are not settled by negotiated agreement), are final, subject only to a contractor's appeal, either under the provisions of the Disputes Act, or to the Courts. Regardless of internal controls, such as IG or RIG's right to maintain a recommendation as open (see paragraph 3.b.(3) of this section), or to question a Contracting Officer's decision regarding questioned costs (see paragraph 3.b.(4) of this section), the Contracting Officer's decision as between the Government and the Contractor is final, subject to established methods of contractor appeal. Authority to negotiate settlements, or make final decisions on questioned costs rests with duly delegated Contracting Officers alone.

5. Procedures

In order to insure that resolutions of audit recommendations are properly justified and documented, the following procedures are established:

(a) *General.* (1) Copies of all correspondence concerning resolution of an audit recommendation must be promptly sent to the cognizant RIG. All correspondence provided to the cognizant RIG should include the Contractor's name, the contract number(s), and the audit report and recommendation number(s).

(2) In transmitting post-award audit reports to action offices, the RIG's attached memoranda shall identify each contract by its number and request an initial written response within 30 days. Under the Agency's new audit recommendation follow-up system, the RIG's are following up to insure that action offices provide the 30-day responses. The IG is required to provide a copy of the initial response to several Congressional Committees. It is recognized that the initial response to audit reports questioning contract costs takes the form of a notification to the contractor by the Contracting Officer. The cognizant RIG will accept copies of the Contracting Officer's notification as the initial response to the audit report if:

—The notification clearly indicates the title and/or number of the audit report.

—The notification covers all the cost issues raised in the audit report. If it does not, the cognizant RIG requires a separate memorandum explaining the Contracting Officer's position on the remaining cost issues.

(3) Action offices have six months from receipt of an audit recommendation to resolve that recommendation; however, every effort will be made to resolve the recommendation within 120 days of its receipt. The Contracting Officer is responsible for keeping the cognizant RIG informed regarding the status of open audit recommendations in accordance with the procedures established in this Appendix. If for any reason a recommendation cannot be resolved within the 120 day period, the Contracting Officer must so advise the cognizant RIG in writing, giving the reasons. This notification is to be provided as soon as possible, but in any event at least two weeks before expiration of the 120 day period. The Contracting Officer is also responsible for insuring that RIG's four-month follow-up (see paragraph 3b(2) of this section) is promptly answered. For details on RIG's four and six month follow-up procedures, see paragraph 3.b.(2) above.

(4) Responses to audit recommendations must be in writing, properly documented to clearly explain the action taken. When the Contracting Officer is satisfied that action on a recommendation has been completed, and the file properly documented, he or she should specifically request that the cognizant RIG consider the audit recommendation closed, (see paragraph 6 of this section). The cognizant RIG should be requested to notify the Contracting Officer promptly, in writing, if for any reason they are not prepared to officially close the recommendation, providing the reasons. Such notice should identify the contract number and refer to the Contracting Officer's last correspondence.

(b) *Audit Recommendations Questioning Costs Under AID Direct Contracts.* (These procedures are mandatory for audit recommendations assigned to SER/CM. It is recommended that they be applied, suitably adapted, to audit recommendations assigned to Missions which have been delegated contracting authority or to an Area Contracting Officer).

(1) *Documentation and Control.* (a) All correspondence to and from the cognizant RIG shall specify the contract number, contractor's name, audit report number, and recommendation number, plus the amount of the questioned costs allowed or sustained as disallowed by the contracting officer.

(b) All incoming audits containing recommendations for action by SER/CM are to be immediately submitted to CM/SD/SUP. CM/SD/SUP will log in the audit report, recording the recommendation numbers and established due dates for all recommendations assigned to SER/CM. CM/SD/SUP will then transmit the audit, through the cognizant division chief, to the Contracting Officer with action responsibility.

(c) CM/SD/SUP will establish a tickler file of recommendations assigned to SER/CM, and will provide internal reminders and follow-ups.

(d) The Contracting Officer will keep CM/SD/SUP advised on the current status of open recommendations by providing CM/SD/SUP with a copy of official audit-related correspondence between the Contracting Officer and the RIG. Any necessary follow up by CM/SD/SUP to update data for preparation of reports shall be made through the cognizant division chief.

(2) *Notification, Negotiation, and Settlement.* (a) Within two weeks after receipt of the audit report, the Contracting Officer shall formally notify the contractor by letter of the costs questioned. This notification shall require the contractor to respond to the Contracting Officer within 30 calendar days of receiving the letter. If warranted in the circumstances, invite the contractor to participate in negotiations to arrive at a mutually acceptable resolution of such costs. If no response has been received within 30 calendar days following the initial notification to the contractor of the questioned costs, issue a follow-up letter to the contractor requesting a response within 20 calendar days. In this follow-up the contractor should be advised that failure to respond within the specified period will result in the issuance of a final decision, pursuant to

the Disputes clause of the contract. If no response is received 20 calendar days after the follow-up letter, the Contracting Officer makes a final decision in accordance with AIDPR 7-1.318-1 regarding the questioned costs and issues, in writing, the appropriate Contracting Officer's decision as authorized in the Disputes clause of the contract. A copy of each letter, and any decision, shall be sent to the cognizant RIG (and, when the audit recommendation is assigned to SER/CM, to CM/SD/SUP).

(b) If the contractor responds to the Contracting Officer's letter identifying questioned costs, but an acceptable settlement is not achieved within a reasonable period of time (normally, 3 months from the date of initial notification), the Contracting Officer shall consider negotiations to have reached an impasse. The Contracting Officer shall then issue the appropriate decision as authorized in the Disputes clause of the contract. A copy of this decision must be sent to the cognizant RIG (and, when the audit recommendation is assigned to SER/CM, to CM/SD/SUP). See also paragraph 5b(4) of this section regarding notification of the Controller.

(c) Normally, the contractor will respond to notification of questioned costs, and a mutually acceptable settlement can be negotiated. Such negotiated settlements must be documented for the contract file by the Contracting Officer. The written record must include:

(i) The initial audit findings, in detail, including all questioned costs, item by item.

(ii) The Contracting Officer's position, as reflected in the notification to the contractor, on each of the audit findings, and questioned costs. If there are any differences between the Contracting Officer's position and that of the audit, these must be explained, showing exactly what the differences are, why, and how they were arrived at (including discussions, comments, and advice or clearances by other offices).

(iii) A final summary analysis showing the audit finding; the Contracting Officer's initial position; the contractor's response; subsequent positions of both parties, and final resolution. This must be in sufficient detail to permit any reasonable person to understand what the issues were, how much was involved, what items were adjusted (plus how much and why), what the final resolution was, and why.

A copy of this written record, clearly marked to indicate the audit report and recommendation number(s) must be sent to the cognizant RIG (and, when the audit recommendation is assigned to SER/CM, to CM/SD/SUP). See also paragraph 5b(4) of this section, regarding notification of the Controller.

(3) *Collection.* The preferred method of collection is through the issuance of a Bill for Collection, in accordance with Agency policy on cash management. Use of any other collection method must be coordinated in advance with FM/PAD. Bills for Collection are issued by the Controller in accordance with the procedures set forth in paragraph 5b(4) of this section.

(4) *Notification of the Controller.* (a) When a settlement has been negotiated, or a final decision has been issued pursuant to the Disputes clause, it remains to collect the amount determined due to AID (sustained disallowances). The Contracting Officer is responsible for notifying the Controller to issue a Bill for Collection. A copy of this notification must be sent to the cognizant RIG, and to IG/PPP (and to CM/SD/SUP, for audits assigned to SER/CM).

(b) The notification to the Controller must contain the following information:

(i) Identification of the contract/task order/work order, providing the contract number, and the contractor's name and address;

(ii) The most recent accounting and appropriation data (PIO/T number and allotment number, etc.);

(iii) The amount due to AID;

(iv) The applicable audit and recommendation number(s); and

(v) A copy of the Contracting Officer's negotiated settlement or final decision pursuant to the Disputes clause (see paragraph 5b(2) of this section).

(c) The notification must request that a copy of the Bill for Collection be sent to the cognizant RIG, IG/

PPP, and the Contracting Officer. The Contracting Officer is responsible for following up to insure that the Bill for Collection has been issued, and that a copy is in fact provided to the cognizant RIG and to IG/PPP, and is placed in the contract file.

(d) If the Contractor appeals the final decision pursuant to the Disputes clause, the Contracting Officer must promptly notify the Controller to suspend collection pending resolution of the appeal. Suspension action by the Controller shall be taken in consultation with the Office of the General Counsel, pursuant to Delegation of Authority No. 80. The Contracting Officer is responsible for notifying the Controller regarding resolution of any appeal.

6. Closing Audit Recommendations

When the Contracting Officer has completed all action required by an audit recommendation in accordance with the procedures established in this Appendix, he/she shall request that the recommendation be considered officially closed. The memorandum to the cognizant RIG shall specifically identify the audit report and recommendation number(s), summarize the actions taken, and explain why the recommendation(s) should be considered closed, providing sufficient evidence to permit the cognizant RIG to make a reasonable decision. For audit recommendations involving questioned costs which result in sustained disallowances, RIG and IG/PPP will accept a copy of the issued Bill for Collection as evidence to close a recommendation. A copy of the request to close a recommendation shall be sent to IG/PPP (and, for audits assigned to SER/CM, to CM/SD/SUP).

7. Clearances

(a) *General.* All proposed post-award audit responses, whether to internal audits prepared by the IG, or to GAO audits, prepared by SER/CM are to be cleared in accordance with AA/SER requirements in effect at the time the response is prepared. Responses prepared by Mission or Area Contracting Officers will be cleared in accordance with applicable Mission and Bureau procedures.

(b) *Final Decisions Pursuant to the Disputes Clause.* If settlement of an audit requires a final decision by the Contracting Officer in accordance with AIDPR 7-1.318-1, pursuant to the Disputes Clause, such decisions must be cleared by GC or the cognizant Mission or Regional Legal Advisor.

[46 FR 31592, June 16, 1981]

Appendix K—AID's Academic Publication Policy

ACADEMIC PUBLICATION

1. Statement of Policy

This is a statement of AID policy on publication, or release to parties other than those specifically authorized, of unclassified materials gathered or developed under contracts with academic institutions.

2. Underlying Principles

AID favors and encourages the publication of scholarly research as well as the maximum availability, distribution, and use of knowledge developed in its program.

This policy statement does not deal with material that is classified for security reasons. It does deal with considerations of national interest, not of sufficient gravity to warrant security classification, but serious enough to affect adversely the conduct of U.S. assistance programs. Consequently, in addition to the requirements of courtesy, propriety, and confidence which normally guide scholars in their work, there should also be consideration of the potential repercussions of publication on the successful execution of development and other cooperative programs in which the United States and foreign countries are involved.

3. Operational Definitions

The Agency draws a distinction between two kinds of manuscripts which a scholar may wish to publish:

(a) A report which is prepared and delivered to the Agency under the terms of the contract (a "contract manuscript"); and

(b) An article or book based upon experience and information gained under an AID contract but not prepared or delivered under the contract (a "non-contract manuscript").

There are two kinds of actions, to be specified in the contract, which the Agency can take upon notification of a contractor's desire to publish:

(a) Comment only, under which AID and the foreign government involved may review the manuscript, and have their comments considered seriously by the contractor prior to publication; and

(b) Authorization for release, which AID may withhold if reconciliation between the national interest and the author's interest is impossible.

4. Policy Statements

(a) AID, as a general rule, will not require an academic institution to obtain permission to publish the written work produced under a contract. It will ask for the opportunity to review the manuscript for comment only, prior to publication.

In the case of a contract manuscript, AID reserves the right to disclaim endorsement of the opinions expressed; if it is a noncontract manuscript, AID reserves the right to dissociate itself from sponsorship or publication.

(b) On the other hand, AID may reserve the right of authorization for release in those exceptional cases where conditions exist making it reasonable foreseeable, in light of the contract's scope of work and the manner and place of performance, that the written work to be prepared and delivered under the contract may have adverse repercussions on the relations and programs of the United States. Where this right is reserved, it must be so specified in the contract. In determining where to reserve such right, AID will consider all relevant factors, including:

(1) The extent to which prompt and full performance of the contract will require access, facilitated by reason of the contract, to information not generally available to scholars;

(2) The extent to which the work involves matters of political concern to foreign countries, particularly where any substantial part of the work is to be performed therein;

(3) The extent to which, by reason of AID's close involvement and cooperation in the performance of the contract, the work product may be so identified with AID itself as to prevent effective disclaimer of AID endorsement thereof;

(4) The extent to which the objective of the contract is to provide advice to AID or to a foreign government of immediate operational significance in the conduct of the AID program or the implementation of governmental programs in the host country;

(5) The desires of the host country.

5. Implementation

The successful implementation of this policy on publication rests on a thorough understanding and acceptance of these principles by AID and the prospective contractor. The actual publications provision for a particular contract, then, would be so worded as to reflect the agreement reached in the contract negotiations.

AID's concern with noncontract manuscripts is related to the identification of a manuscript with the U.S. Government. This concern will be modified by the passage of time following termination of the contract.

In the normal case of prepublication review for AID comment, the institution will submit a copy of the manuscript not later than the date of submission to the publisher. This gives the Agency time to comment if it is deemed appropriate. However, in the case of review for authorization, timely notification of AID's response will be given, consistent with the size of the manuscript and the number and location of the parties involved.

The Agency will make every effort to expedite this review procedure in accordance with the underlying principle described at the beginning of this policy statement.

[46 FR 31592, June 16, 1981]

APPENDIX L—REVIEW AND CERTIFICATION OF PROCUREMENT REGULATIONS

1. Purpose

This AIDPR appendix formalizes procedures for the review and certification of proposed AID Procurement Regulations, promulgated by AIDPR Notices, as required by Office of Federal Procurement Policy (OFPP) Policy Letter 80-5.

2. Background

OFPP Policy Letter 80-5 requires, in pertinent part, that: "a. Heads of executive departments and establishments shall assure that no procurement regulation is promulgated within their respective agencies unless a written determination is made, under review procedures established by the agency head, that such regulation would not be inconsistent with the policies set forth in paragraphs (1) through (8) of Section 2 of the Act. (The Office of Federal Procurement Policy Act, Pub. L. 93-400, as amended by Pub. L. 96-83), or with policy directives issued by the Administrator (OFPP) under 6(h) of the (OFPP) Act. The required determination shall accompany the publication of any such procurement regulation in the FEDERAL REGISTER and shall also accompany promulgation directly to Federal Agencies. With respect to acquisition regulations, the required determination shall be the responsibility of the principal acquisition official."

By letter dated August 19, 1980, the Deputy Assistant Administrator, Bureau for Program and Management Services, acting as the "principal acquisition official" for AID, advised the Administrator, OFPP, of the review and certification procedure to be followed by AID for the AIDPR. This Appendix formalizes the procedure established in DAA/SER's August 19 letter.

3. Procedure

(a) Every proposed policy, regulation, procedure, or form to be promulgated in the AIDPR shall be carefully reviewed by the Policy Branch in the Office of Contract Management (CM/SD/POL) to insure that the proposed action is consistent with paragraphs (1) through (8) of Section 2 of the OFPP Act, and with policy directives issued by OFPP under Section 6(h) of the OFPP Act (for brevity, hereinafter referred to as the OFPP Act and OFPP policy directives), as required by OFPP Policy Letter 80-5.

(b) Only those policies, regulations, procedures, or forms found in the initial review by CM/SD/POL to be consistent with the OFPP Act and OFPP policy directives will be prepared for promulgation in the AIDPR. The results of this initial review may be appealed to the Assistant General Counsel for Contracting and Litigation (GC/C&L), and ultimately to the Deputy Assistant Administrator Bureau for Program and Management Services (DAA/SER), whose decision is final.

(c) Policies, regulations, procedures, and forms are incorporated into the AIDPR by AIDPR Notices, signed by DAA/SER. AIDPR Notices are prepared by CM/SD/POL and forwarded to DAA/SER by Action Memorandum from the Director of the Office of Contract Management. CM/SD/POL will include a summary of their review, and a statement that CM/SD/POL finds the proposed AIDPR Notice is not inconsistent with the OFPP Act and OFPP Policy directives in the Action Memo. CM/SD/POL will also prepare a determination for signature by DAA/SER, to accompany the AIDPR Notice, stating that the proposed AIDPR Notice is not inconsistent with the OFPP Act and OFPP policy directives (sample determination attached).

(d) Proposed AIDPR Notices and their covering Action Memos are reviewed by GC/C&L before being presented to DAA/SER. GC/C&L will, as part of their review, consider CM/SD/POL's finding that the proposed AIDPR Notice is not inconsistent with the OFPP Act and OFPP policy directives. GC/C&L clearance of the Action Memo will serve as an objective confirmation of CM/SD/POL's finding. In the event that GC/C&L and CM/SD/POL do not agree on the finding that a proposed AIDPR Notice is not inconsistent with the OFPP Act and OFPP policy directives, they will attempt to

reconcile their opinions. If no agreement can be reached, the Director, SER/CM will present the respective positions to DAA/SER for final decision.

(e) The determination (sample attached) prepared for DAA/SER's signature must accompany proposed AIDPR Notices when they are submitted for publication to the FEDERAL REGISTER.

Attachment to Appendix L

DETERMINATION

As required by paragraph 4a of OFPP Policy Letter 80-5, I hereby determine that [AIDPR Notice] has been reviewed against the policies set forth in paragraphs (1) through (8) of Section 2 of the Office of Federal Procurement Policy Act (Pub. L. 93-400 as amended by Pub. L. 96-83, hereinafter referred to as the Act), and policy directives issued by OFPP under Section 6(h) of the Act. Based on this review, I hereby determine that [AIDPR Notice] is not inconsistent with the policies set forth in paragraphs (1) through (8) of Section 2 of the Act, and policy directives issued by OFPP under Section 6(h) of the Act.

[46 FR 31595, June 16, 1981]

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts and an alphabetical list of agencies publishing in the CFR are included in the CFR Index and Finding Aids volume to the Code of Federal Regulations which is published separately and revised annually.

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VIII Federal Grain Inspection Service, Department of Agriculture (Parts 800–899)

IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900–999)

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List of CFR Sections Affected

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